

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
UNITED STATES OF AMERICA,
Plaintiff,

08 CR 605

versus **United States Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201**

NORBY MARIN MORENO,

DEFENDANT.

-----X

December 9, 2008

9:30 a.m.

TRANSCRIPT OF TRIAL

**Before: HON. CHARLES P. SIFTON,
DISTRICT COURT JUDGE**

APPEARANCES

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**Proceedings recorded by mechanical stenography, transcription
by CAT.**

**ALLAN R. SHERMAN, CSR, RPR Official Court Reporter
United States District Court Eastern District of New York**

1 THE CLERK: Criminal cause on trial, United States
2 of America versus Norby Marin Morena, docket number 08 CR 605.

3 (Official Spanish Interpreters sworn, Estrelita
4 Plested and Francisco Olivero.)

5 THE COURT: Could you state your names for the court
6 reporter.

7 INTERPRETER ESTRELITA PLESTED: For the record,
8 Estrelita Plested, certified Spanish interpreter.

9 INTERPRETER OLIVERO: Francisco Olivero, certified
10 Spanish interpreter.

11 THE COURT: So have a seat and we have the jury.

12 Mr. Kessler is orienting the jury as to how to get
13 in and out of the jury room with their security passes and
14 while he is doing that, we can take up a few preliminary
15 matters.

16 I've looked at your in limine applications and the
17 largest one it seems to me is the one concerning the alleged
18 effort to frame Ms. Morena by planting narcotics in her
19 luggage.

20 Now, the problem I have with that is, first of all,
21 I haven't been given an affidavit as to what Ms. Morena is
22 going to testify to. I assume that she will testify in some
23 fashion that justifies putting this evidence concerning the
24 unfortunate circumstances that her family has gone through in
25 Colombia either through corroborating evidence, including

1 possibly expert testimony, but the presentation of what she is
2 going to testify to is so sketchy that I am not going to
3 permit any reference or evidence on that score until I have
4 heard more of what she has to say.

5 There is a potential for prejudice in the form of
6 simply eliciting the quite natural reaction on the part of
7 jurors to think that Ms. Morena and her family have gone
8 through enough hardships in this world and shouldn't be
9 subjected to criminal penalties which would prejudice the
10 government's case and that the only purpose for introducing
11 this subject of the Colombian disappearances is to elicit
12 prejudicial sympathy.

13 One part that troubles me in particular is sort of
14 the lack of logic. The circumstances don't quite hang
15 together in a logical fashion and in particular, even if there
16 was a substantial motivation on the part of Colombian
17 paramilitaries to plant evidence, and even that aspect of the
18 defense is sketchy, why would they go through this very
19 roundabout way of notifying the U.S. authorities that there
20 was drugs to be found in luggage?

21 So what I am going to do is wait until I have heard
22 Ms. Morena's testimony before ruling on the admissibility of
23 the expert testimony and these newspaper articles and
24 certificates and reports so that I am in a better position
25 than I am now to weigh the probative value of the proposed

1 evidence against its prejudicial effect.

2 Concerning some of the other in limine applications,
3 I'm going to grant the government's motion to preclude proof
4 concerning the government's plea offer because the probative
5 value of that is substantially outweighed by the prejudice and
6 confusion that would be generated by getting into the subject
7 of mandatory minimums and safety valves and sentencing
8 overall.

9 So that motion is granted.

10 With respect to the motion to preclude the
11 government's border patrol records, I'm not going to rule one
12 way or the other at this stage as to that. The more
13 straightforward way of dealing with the circumstances under
14 which the defendant was stopped at the border is to have the
15 person who stopped her testify to the circumstances. And
16 again, there I will weigh the probative value both of the
17 testimony and of the records against the potential prejudice
18 that would exist if we took the rather amorphous circumstances
19 which lead people at the border to search and use that kind of
20 suspicious circumstances to bolster proof of the defendant's
21 guilt.

22 So don't get into those records until after the
23 border patrol agent has testified and we'll see if anything
24 further is necessary to explain the circumstances under which
25 the border patrol acted or didn't act.

1 Apart from that, I think what I'll do is simply
2 bring the jury in and give them the usual preliminary
3 procedural instructions. I don't believe they have been sworn
4 so we'll swear them in and we'll get started.

5 MS. HARRIS: Your Honor, there is one I think other
6 important matter to take up.

7 THE COURT: What is that?

8 MS. HARRIS: I am concerned what the government is
9 going to try to elicit from their witness concerning the
10 source that led them to the Metro Motel.

11 THE COURT: Yes.

12 MS. HARRIS: And I understand and agree that it's
13 necessary that some basic information that they receive is
14 necessary but any reference to a wiretap would be hearsay and
15 present confrontation clause issues for us since we've never
16 been presented with the substance or content of that wiretap.

17 THE COURT: I haven't seen the wiretap yet either.
18 Are you going to present the wiretap?

19 MR. KAZEMI: Your Honor, we would intend to present
20 the wiretap not for its truth.

21 THE COURT: Before you get into it, I'll give both
22 sides an opportunity to be heard.

23 MS. HARRIS: They are presenting a not for the
24 truth.

25 THE COURT: Are you asking me or the government

1 attorney? That is not appropriate. Don't do that.

2 MS. HARRIS: I apologize.

3 MR. KAZEMI: We will present the fact of the wiretap
4 to explain Agent Aceves' actions not for their truth but to
5 explain why Agent Aceves went to the Metro Motel room 166.

6 THE COURT: There is some area in which this is
7 appropriate and we'll take it up before it's presented.

8 MS. HARRIS: I believe the government may open on
9 it.

10 THE COURT: On the contents of the report? Don't
11 refer to the contents of the report.

12 MR. KAZEMI: Your Honor, the government does intend
13 to open on the fact that there was a wiretap.

14 THE COURT: No, I won't permit that.

15 MR. KAZEMI: May the government open on the fact
16 that there was a source of information that led Agent
17 Aceces --

18 THE COURT: Yes, source of information is fine.

19 MR. KAZEMI: And I spoke with defense counsel. She
20 is willing to stipulate to the authenticity of two original
21 CDP customs declarations which the government does intend to
22 open on.

23 On those declarations the defendant lists her
24 intended address which is not the address that she went to
25 after she arrived in the United States.

1 THE COURT: Why do I need to know all this? You
2 have a stipulation? If you have a stipulation, you don't have
3 to tell me.

4 MS. HARRIS: There was one other matter, an in
5 limine application, and that is expert testimony from the
6 government agent on the behavior of narcotics traffickers.

7 It does seem to me that there is an appropriate
8 place for experts to testify as to how SIM cards and prepaid
9 phones get wrapped up in the apparatus of drug traffickers,
10 however, I don't at this point see any need for expert
11 testimony on the use of couriers or the packaging of narcotics
12 in the context of this case.

13 If you'll ask the jury to come in, we'll get
14 started.

15 MR. KAZEMI: Your Honor, just one final matter, if
16 it pleases the Court.

17 THE COURT: Go ahead.

18 MR. KAZEMI: I'm not sure if the defendant intends
19 to open on the theory that the drugs were planted by a
20 Colombian paramilitary organization.

21 THE COURT: She can open on whatever she says her
22 client is going to testify to if the defense wishes to do that
23 but don't get into the corroboration from newspapers or
24 matters of that sort.

25 Just let them know in your openings as to what each

1 side is going to prove without getting into the details of how
2 it's going to be proved apart from the reference to the fact
3 that the defendant is going to explain her conduct, her
4 circumstances.

5 MR. KAZEMI: Thank you, your Honor.

6 (Jury in at 10:15 a.m.)

7 THE COURT: Come on in, ladies and gentlemen, and
8 have a seat and we'll rearrange you if necessary and get
9 everybody back in the positions in which you were during your
10 jury selection.

11 Let's go through the jury role.

12 (Jury roll taken and all jurors present.)

13 THE COURT: Okay, everybody is in the right place.

14 Ladies and gentlemen, my name is Charles Sifton. I
15 am the judge who will be presiding over the trial, the case.
16 I'm sorry I wasn't with you yesterday during the jury
17 selection. I had another commitment and Magistrate Judge Go
18 was kind enough to step in and do the jury selection.

19 I think it was here in the courtroom and I'm glad
20 you are already oriented as to where you were seated and I
21 hope you are also oriented as to how to get into the jury room
22 during the course of the trial and leave from it.

23 We'll get started with the trial.

24 The first event is to administer the oath of office
25 to you and I'll ask Mr. Kessler to do that.

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1 (Jury sworn.)

2 THE COURT: We're going to start out by giving you
3 some legal instructions. The legal instructions that I am
4 going to give you now have to do with the procedure that will
5 we'll be following during the course of the trial, basically
6 just to tell you what comes first and second and what the
7 overall procedural trajectory of the trial will be.

8 When that is finished, we'll get started with the
9 opening statements and the taking of testimony and the balance
10 of the trial.

11 As I suspect you may have been told yesterday during
12 the jury selection the judge in each case during the trial is
13 responsible for informing you about the portion of the law
14 that you need to know in order to function as jurors. We
15 don't expect that you'll come here already learned in the law
16 and in fact instruct you to disregard anything that you may
17 know about the law from other contexts because the law changes
18 over time and is different in different courts and is
19 different depending on what kind of case you are dealing with,
20 whether it's criminal or civil or what the accusations or
21 complaint is.

22 Now, in advising you of the law and instructing you
23 on the law, there are basically three categories of law that
24 you need to be informed of. The most important comes at the
25 conclusion of the case just before you retire to consider your

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1 verdict.

2 We call that body of law the substantive law,
3 meaning simply that this is the law that makes the kind of
4 conduct that is the subject of the accusations that are made
5 here against Ms. Morena a crime if those accusations are
6 proved beyond a reasonable doubt. And that law comes from
7 Congress. The Congress passes a law and in the substantive
8 instructions, I'll actually read to you the portion of the
9 particular legal statute that makes certain conduct, if proved
10 beyond a reasonable doubt, a crime and more specifically,
11 after I have read you the law, I'll then advise you what
12 essential facts have to be proved beyond a reasonable doubt
13 before someone can be found to have committed the crime that
14 is prohibited by the statute.

15 The essential facts are not lengthy or numerous but
16 I'll set them out, I'll define certain terms that are used in
17 the statute and give you the legal definition of them and I'll
18 give you some additional procedural instructions as to how to
19 deal with the particular categories of evidence that are
20 presented to you.

21 Now, in addition to the substantive law, there is
22 what I am explaining to you now, the procedural rules that we
23 follow which dictate such matters as who goes first and what
24 the order of the trial is going to be.

25 And finally, there is a body of law called the Rules

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1 of Evidence which determines the kinds of information that can
2 be considered in deciding a matter of this importance. Those
3 are also spelled out as rules and it will be my job to make
4 sure -- and the attorneys' job, to make sure that those Rules
5 of Evidence are complied with.

6 Now, let me get to the procedural instructions that
7 you need to be aware of. You need to be aware of them in the
8 sense of understanding what we're doing, where we are in the
9 process of the trial for reasons that will become apparent.

10 So when I finish these procedural instructions,
11 we'll go to the first step which will be these so-called
12 opening statements by the lawyers.

13 The lawyer for the prosecution, the assistant United
14 States Attorneys who will be trying this case, will go first,
15 not out of any deference to the prosecution, both sides as I
16 am sure you were told yesterday are treated equally, neither
17 side is entitled to special consideration, but because the
18 prosecution has the burden of proof and the burden of
19 convincing you beyond a reasonable doubt that each of the
20 essential facts have been proved, they speak to you first and
21 are followed then by the defense lawyers.

22 Now, the opening statements you may think in your
23 own mind, why do we need to hear from the lawyers,
24 particularly because what the lawyers tell you is not part of
25 the evidence in the case.

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1 The lawyers and I as a general matter should be
2 helping you to understand the evidence and the opening
3 statements serve the function of telling you what the lawyers
4 anticipate the evidence will be so that you get sort of an
5 overview of what all the case is going to look like at the end
6 which you'll find will help you in understanding a particular
7 witness who testified or understanding where we are in the
8 presentation of the proof.

9 When I say that the lawyer is not giving you
10 evidence, it may be helpful to understand that under the rules
11 of the legal profession, a lawyer who is in the position of a
12 witness who could give evidence about the case is in fact
13 disqualified from acting as a trial lawyer in the case. For
14 example, if a lawyer is driving across the Brooklyn Bridge and
15 an accident occurs in front of his or her car, that lawyer
16 cannot act as a trial lawyer for anybody involved in that
17 accident.

18 And the reason is a practical one of making sure
19 that jurors do not confuse what lawyers say in describing or
20 orienting you on evidence with the evidence itself. Their
21 role is to help you understand the evidence, to think about
22 it, reason about it but not to give evidence themselves. And
23 I ask the lawyers, for example, in their opening statements to
24 make it easier for you by saying we expect to prove X rather
25 than just saying the fact of the matter is X and to always

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1 phrase things in a way which helps you to distinguish what
2 lawyers say from what witnesses say. Witnesses testify under
3 oath. They are subject to cross-examination. Lawyers are
4 not. They are the ones who do the cross-examining for one
5 thing.

6 So it's a logical question to ask why not just get
7 straight to the evidence without taking time for opening
8 statements and the answer to that is that the Rules of
9 Evidence which put certain limits on what witnesses can say
10 prevent witnesses from telling you where their testimony fits
11 in as it were or they can't for example say well, I don't know
12 the answer to that question but the next witness who comes in
13 to testify is going to be able to explain that to you.

14 That sort of non-evidentiary explanation where
15 things fit in or what you can conclude from the evidence that
16 is presented is separated out and given to the lawyers as
17 their function to help you follow the testimony as it comes
18 in.

19 Now, the prosecution's lawyer will present what he
20 anticipates the evidence will be. After that, as I said, the
21 defense lawyer has an opportunity to put before you what she
22 anticipates, what additional proof she anticipates is going to
23 be before you. And following that, we get to the evidence
24 itself which will be pretty quickly this morning.

25 Now, the prosecution, once again not out of

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1 deference to the prosecution but simply as a matter of good
2 order, will present all of the evidence that the prosecution
3 has to offer you in support of the charges before the
4 defendant has an opportunity to present evidence herself.
5 That doesn't mean that the defense lawyer is going to sit on
6 her hands or not be heard from or ask any questions. Each
7 witness, as you are probably aware, is questioned first on
8 what we call direct examination by the lawyer calling the
9 witness to the witness stand. After that questioning is
10 concluded, the other side gets to engage in what I've referred
11 to already as cross-examination but cross-examination is
12 limited to the subject that the witness testified about on the
13 first round of questioning. After the cross-examination, the
14 questioning can go back to the lawyer that started the witness
15 out but again, the questioning at that stage is limited to the
16 subjects that were inquired about in the preceding round of
17 questioning.

18 So it goes back and forth each time getting more and
19 more limited until both sides have asked all the questions
20 that they want to ask on the particular subject that the
21 witness was called upon to testify about on the first round of
22 questions.

23 Now, you can see how that manner of presenting
24 evidence means that the same witness may be called to testify
25 twice in a trial, once by the prosecution and later by the

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1 defense because each side wants to ask the questions of the
2 witness on a different subject. So there may be instances in
3 which a witness will come back and testify to some unrelated
4 subject that the witness was not questioned about initially.

5 In addition to testimony under oath, you'll also be
6 presented with evidence in the form of for lack of a better
7 word objects, things that can't speak for themselves. They
8 are called exhibits. They will be identified by exhibit
9 stickers, each one given a separate number or letter of the
10 alphabet.

11 The exhibits may simply be shown to a witness, for
12 example, to refresh a witness' recollection in which case if
13 it's successful in refreshing the witness' recollection.

14 The witness will then give the testimony and the
15 exhibit will not itself be offered in evidence so that it
16 won't be available for you to examine during your
17 deliberations, but that exhibit will have an identifying
18 number or letter but it will not be, as we say, received in
19 evidence to be available to you later on in the trial.
20 Instead, the issue will be decided on the testimony, but there
21 are instances in which these exhibits will be used not to
22 refresh people's recollection or assist a witness in
23 explaining himself but will be themselves offered in evidence
24 so that they can be considered by you independently of
25 anybody's testimony. Examples could be what pieces of

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1 luggage, the appearance, size, the weight of the luggage is of
2 significance to you in deciding an issue in the case.

3 Other times the exhibits will be pieces of paper.
4 Sometimes the pieces of paper will be offered simply for their
5 appearance, for numbers or letters that happen to be written
6 on the piece of paper which, for example, seven numbers on a
7 piece of paper, even though the paper itself doesn't explain
8 what the seven number are, if it turns out the seven numbers
9 on the piece of paper happen to be a telephone number the same
10 as what someone else says is my telephone number or somebody
11 else's telephone number, that exhibit will be put before you
12 together with the circumstances under which this piece of
13 paper was found to establish some kind of connection between
14 the place where the paper was found and the individual who
15 says that those numbers are a telephone number.

16 Other times documents, memoranda, records,
17 accounting records, that sort of thing, are placed in evidence
18 not simply for their appearance, whether they are on a white
19 piece of paper or have an individual's handwriting on them but
20 rather pretty much the way witnesses are put before you. We
21 say that the exhibit is offered for its truth, meaning by that
22 not that the writer when he or she wrote on the memo was sworn
23 to tell the truth or something of that sort or was subject to
24 cross-examination because you can't cross-examine a document,
25 what we mean when a document is offered for its truth is that

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1 it is one of those categories of documentary evidence that the
2 Rules of Evidence permit to be placed before you even though
3 not prepared under oath or subject to cross-examination. An
4 example of that -- the standard example is business records
5 which ordinarily if they are established to be genuine or
6 plausibly established to be business records, we say well, in
7 most businesses people keep records more or less accurately
8 because otherwise how do they know whether they are making
9 money or losing money or owe taxes or not.

10 So under the rules of evidence, that kind of
11 document, once it's established to be that kind of document,
12 can be received in evidence even though not prepared under
13 oath because there are sufficient what we call indicia of
14 reliability to get it up to the level of reliability that we
15 hope is acquired when people testify under oath and are
16 cross-examined.

17 This may be a good point to distinguish between what
18 is permitted under the Rules of Evidence and what is the
19 truth.

20 The fact that something is written down in a
21 business record doesn't obviously establish that the records
22 are truthful or accurate but then no more does the taking of
23 the oath and subjecting oneself to cross-examination establish
24 that someone is telling the truth. It would require you to
25 accept the testimony as true. And the reason for that is

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1 because although I am the judge of whether something meets the
2 Rules of Evidence or can lawfully be considered, the decision
3 as to where the truth lies, whether the witness is telling the
4 truth, whether the document is an accurate business record is
5 a factual matter and as I suspect the magistrate would have
6 told you during jury selection, you decide all the facts of
7 the case, not the lawyers and not I.

8 So the fact that I say well, you could consider that
9 under the Rules of Evidence means just that, you can consider
10 it, you can accept it, you can reject it, you can decide it's
11 accurate or inaccurate, false or true. Those are all factual
12 issues which are up to you to decide.

13 Now, there are in addition to testimony and
14 exhibits, there are other categories of evidence which will be
15 put before you and as it's put before you, I may give you some
16 additional procedural instructions as to how to approach these
17 different categories of evidence but we'll wait until we get
18 to one or the other of these different categories of evidence
19 to give you the procedural instructions as to how the deal
20 with them.

21 Now, after the government has presented all of its
22 proof, the defendant has had an opportunity and it's just an
23 opportunity, I use that word advisedly because as you'll
24 probably have been told, a jury does not have to prove his or
25 her innocence. The burden is always on the prosecution to

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1 prove the essential elements of the accusation and to prove it
2 beyond a reasonable doubt. But obviously although not under
3 any obligation to offer evidence or to testify, a defendant
4 has an opportunity if she chooses to offer evidence and to
5 testify. And that will come in the defense case.

6 After the defense case, the prosecution then because
7 of its burden of proof which always resides with the
8 prosecution, the government has an opportunity although it's
9 not an obligation, to present a rebuttal case although the
10 obligation overall is to prove the defendant's guilt beyond a
11 reasonable doubt.

12 After both sides have presented all the evidence
13 each side intends to put before you, we then get to another
14 stage of the proceeding in which the lawyers address you.
15 They don't add to the evidence but they in their closing
16 arguments, their summations, we use those two different words
17 to refer to this stage of the proceeding besides the different
18 functions of the statements by the attorneys. The statement
19 at that point is not adding to the evidence but it is again an
20 opportunity for the lawyers each from each lawyer's client's
21 perspective to put before you the arguments not in the sense
22 of heated table stomping, emotional presentations but the
23 logical arguments as to what reason and common sense can lead
24 you to conclude from the evidence as to whether the essential
25 facts have or have not been established.

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1 I should say that throughout this trial, if the
2 magistrate didn't say this, let me say it again, but even if
3 she did, it's worth repeating, everybody in this proceeding
4 including you yourself are to approach the case and the
5 evidence from the perspective of reason and common sense and
6 meaning by that that you are not to decide any aspect of the
7 case, I don't want to say irrationally, non-rationally, that
8 is based on emotions. Emotions are quite natural in this
9 courtroom. It's inevitable. Sympathy for someone accused of
10 a crime is a natural reaction to a criminal prosecution.
11 Antipathy to someone accused of a crime can also arise but as
12 I hope you understand, in performing your function and the
13 lawyers in performing their function are not here to morally
14 condemn or emotionally appeal to you but rather to use reason
15 and common sense to decide whether the essential facts of the
16 case have or have not been established beyond a reasonable
17 doubt.

18 So when we get to the summations, you will not be
19 appealed to emotionally or at no point during the trial will
20 the lawyers be appealing to your emotions or non-rational
21 feelings about people of different backgrounds or races or
22 ethnic backgrounds, it will all be on the basis of reason and
23 common sense.

24 Now, the other word we use to refer to these closing
25 statements by the lawyers is summation. And what we mean by

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1 that is very simply the closing statement is an opportunity
2 for the lawyer to remind you of the evidence or testimony that
3 you've heard or to point out to you -- you'll notice that we
4 have a screen over here, and actually in the arms of your
5 chairs you'll find, if you fold back the top, that there is a
6 computer screen like this and that will give the lawyers
7 during the course of the trial an opportunity to let you see
8 the exhibits that the witnesses are testifying about or are
9 being questioned about pretty much as the witness sees it and
10 everybody can be looking at the same thing at the same time.

11 So part of the effort of summations is to point out
12 to you in documents portions that are of particular
13 significance from the perspective of the lawyer who is making
14 the statement in deciding the case.

15 Now, after both sides have an opportunity to sum up
16 and give you closing arguments, that will be the next stage,
17 the stage at which I instruct you on the law which makes
18 certain conduct if proved beyond a reasonable doubt and other
19 essential elements, if proved beyond a reasonable doubt
20 sufficient to establish guilt.

21 You'll then following that retire to consider your
22 verdict which as I am sure you were told must be unanimous.
23 One of the reasons we rely on reason and common sense is not
24 because reason and common sense are better than emotions as a
25 means of deciding things in all situations but simply because

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1 with a rule which requires a unanimous decision, it doesn't
2 work if people just say, well, thinks how I feel about it and
3 I'm not going to change my mind.

4 Feelings are not necessarily bad but they are the
5 kind of approach to evidence which cannot be relied on to
6 bring unanimity. Everybody has to proceed on the same
7 wavelength to assure that we get to the unanimous decision and
8 it's part of the oath which you took at the beginning of the
9 trial to proceed on that basis, proceed on the basis of reason
10 and common sense.

11 Now, you yourselves will continue the process that
12 the lawyers have started of thinking about the case and seeing
13 what conclusions can be drawn and refreshing each other's
14 recollection as to what the evidence has been and then
15 reaching your decision and reporting a verdict.

16 Now, I've talked about the way we are going to
17 proceed. Let me conclude with one final instruction that I'll
18 repeat because of its importance at numerous points during the
19 trial.

20 You are first of all not to discuss the case, not to
21 start prematurely the process of deliberating among yourselves
22 by talking about the case among yourselves until the case is
23 submitted to you to reach a verdict. And the quite sensible
24 reason for that, as you can see, you have gone through all the
25 stages of the case, is that if you hear a witness and then go

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1 out to the jury room on a morning or afternoon recess and you
2 say to a colleague, well, I didn't think very much of that
3 fellow's testimony, later evidence or cross-examination or
4 some instruction you are given later in the trial may cause
5 you to change your mind. But what about the other person that
6 you talked to? Do you have an obligation to go to that person
7 and undo any affect you've had in announcing your premature
8 decision? To avoid any difficulties of that sort, the rule
9 which we follow is don't talk about the case among yourselves
10 until you are instructed to consider your verdict.

11 Also, don't talk about the case with anyone else.
12 The best method for avoiding that is tell people at home or
13 place of business if you happen to go to one that you are
14 serving on a jury in a criminal case in Federal Court but then
15 before whoever you are talking to can get a word in edgewise,
16 tell them that you have been ordered, directed, however strong
17 you need to make it to get the point across, not to discuss
18 the case with anyone until after its concluded. You can talk
19 about it after it's concluded to your heart's content but
20 don't talk about the case with anyone else so that someone
21 else, even if you rely on it in other contexts, you can't rely
22 on someone who hasn't been through this whole process to help
23 you resolve any issue.

24 You are all here together, each of you coming,
25 looking inevitably at it from a different perspective on the

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1 same body of evidence and all of you coming together to some
2 common sense conclusion.

3 So that is the process to follow. Some portions of
4 this evidence may deal with locations in a particular part of
5 the city. Don't go to visit the location for a lot of
6 reasons, very practical reasons. One is you may go to the
7 wrong place. Another is the location may have changed between
8 the time being testified about and your visit. And also, it's
9 unfair to the participants, to the parties to have you go.
10 You are not here to do your own independent investigation.
11 The obligation is on the government to do its investigation,
12 the defense lawyer, and it would be unfair to them to have you
13 doing something that they are unaware of that they can't
14 cross-examine or reproduce.

15 All right, that pretty much concludes that I had to
16 say although I will be giving you additional instructions on
17 procedure from time to time during the trial. I also will be
18 ruling on whether things can be in evidence or shouldn't be in
19 evidence.

20 We try to do that in a way that interferes with your
21 understanding of the evidence as little as possible at various
22 points during the course of the trial. The sort of
23 telegraphic way of dealing with issues of evidence is to have
24 a lawyer simply stand up and say I object. I then if I see
25 what the problem is will rule on the objection either by

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1 saying sustained, meaning that the question may call for
2 information that shouldn't be put in evidence or overruled,
3 meaning that the witness can go ahead and answer the question,
4 that there isn't a problem under the Rules of Evidence.

5 Sometimes I'll have to ask the lawyers to come up
6 here to the side of the bench with the court reporter to see
7 what arguments are by one side or the other whether to admit
8 something in evidence.

9 These are all interruptions during the course of
10 presenting the evidence to you and we try to keep them at a
11 minimum to deal with them before you are in the jury box or at
12 the end of the day or during recesses but the reason for doing
13 this up here at the sidebar, if we have to do it outside your
14 presence, is because obviously talking about whether something
15 should be placed this evidence or not sort of let's the cat
16 out of the bag in a sense that it puts the information in
17 front of you and then you have to forget what you heard about
18 the evidence. It's not impossible to do and I may on occasion
19 instruct you to disregard something, and I'll explain what I
20 mean by that at an appropriate point but we try to limit the
21 evidentiary arguments to this I object and sustained or
22 overruled or to discussions here at the sidebar to make it
23 easier for you to concentrate on the evidence and not be
24 distracted by other kind of information.

25 All right, why don't we start with the opening

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1 statement.

2 How long do you think you are going to be in your
3 opening?

4 MR. KAZEMI: Five minutes, your Honor.

5 THE COURT: Then we'll hear the openings. I assume
6 you won't be much longer, then we'll take a recess.

7 MR. KAZEMI: Late in the evening of July 30, 2008
8 the defendant, Norby Marin Marino, boarded a flight in
9 Colombia, South America.

10 THE COURT: I take it not because you were there but
11 because you are going to present some evidence that will show
12 this?

13 MR. KAZEMI: Yes, your Honor.

14 THE COURT: Let's make it easy for the jurors to
15 understand the distinction.

16 MR. KAZEMI: The evidence will show that the
17 defendant Norby Marin Marino boarded a flight in Colombia
18 South America carrying more than a kilogram of heroin. She
19 flew to JFK International Airport, picked up her bags and went
20 to a motel to deliver her package to another drug trafficker.
21 And the drugs were stuffed in her suitcase hidden inside four
22 metal perfume canisters buried deep inside her clothes.
23 Unfortunately for the defendant, the evidence will show that
24 agents of the Drug Enforcement Administration or DEA found out
25 about this deal, located the defendant at the Metro Motel,

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1 interrupted her plans and seized the heroin that was hidden in
2 her suitcase.

3 Before I go any further, let me introduce myself.
4 My name is Ali Kazemi and I'm an assistant United States
5 Attorney here in the Eastern District of New York. Sitting
6 with me at counsel table is Assistant United States Attorney
7 John Nathanson and DEA Special Agent Salvador Aceves.
8 Together we represent the United States.

9 Ladies and gentlemen, the evidence in this case will
10 show that the defendant arrived at JFK early in the morning of
11 July 31 and filled out a customs form. On that form she
12 stated that while she was in the United States, she would be
13 staying at 5921 Calloway in New York. The only problem is
14 that she never went to 5921 Calloway, instead she went to this
15 place called the Metro Motel with a suitcase full a drugs
16 which you will hear that the defendant and her drugs never
17 went any further. That's because DEA agents had learned about
18 the defendant's plans through a source of information in
19 Colombia. The evidence will show that the source of
20 information in Colombia told the DEA agents that a heavy set
21 Hispanic woman, a drug courier named Norby would be carrying a
22 package of 1.02 kilograms of heroin. She would be carrying it
23 into the United States and staying in a hotel called the Metro
24 Motel in Queens, New York. They even stated that she would be
25 staying in room 166 and transferring her drugs to the next

1 member of this drug ring imminently.

2 The courier the DEA learned about through this
3 course of information in Colombia was the defendant Norby
4 Marin Marino. You will hear that the DEA agents acted on this
5 information by heading straight for room 166 of the Metro
6 Motel where they found the defendant. You will hear that
7 during a search of the defendant's bags, they found four metal
8 perfume canisters buried deep inside the defendant's large
9 suitcase. They looked like normal perfume canisters. They
10 even sprayed perfume but upon closer inspection, the agent
11 learned that the perfume canisters held more than perfume,
12 they also held 1.2 kilograms of heroin.

13 You'll also learn that while the agents were
14 searching the defendant's bags, she received a series of phone
15 calls on her cell phone. All of these calls came from the
16 same caller. The first two calls weren't answered in time but
17 the second two calls were answered and recorded. You will
18 hear those recordings.

19 During the first recorded call, the defendant picked
20 up the phone and with the DEA agent standing next to her, she
21 said: Who are you? Why did you dial my number? The male
22 caller responded to the defendant by saying Norby. The
23 defendant told the man he had the wrong number. You will then
24 learn that moments later, this same man called the defendant
25 right back. The defendant picked up the phone and again with

1 DEA agents standing around her, she said: I don't know who
2 you are and I don't know why you are calling; yet the evidence
3 will show that the defendant had a two minute call with this
4 same caller only two hours earlier that morning and that call
5 took place without any DEA agents around.

6 The evidence will also show in this case that
7 besides the drugs, the defendant was carrying various other
8 items that you might not expect the average carrier -- the
9 average traveler to be carrying, things like a prayer to save
10 yourself if you are find yourself locked up in jail.

11 So why did the defendant conspire with others to
12 bring heroin into the United States? Money.

13 You'll hear a drug expert testify that the heroin
14 the defendant smuggled is worth tens of thousands of dollars
15 in the streets of New York City. You'll also hear from the
16 DEA agents who found the heroin hidden in the defendant's
17 luggage and recorded those two calls in her motel room.
18 You'll hear those recorded calls. And you'll see phone
19 records showing that those were not the only two calls between
20 the defendants and that unknown caller. You will also see the
21 customs declaration the defendant filled out where she says
22 she is heading for 5921 Calloway Avenue.

23 Then you'll hear from the person who actually lived
24 at 5921 Calloway. She will tell you that she hardly knows the
25 defendant and she had no idea that the defendant was even

1 going to be in New York.

2 Let me say a few words about the charges in this
3 case. There are two. In the first charge, the defendant is
4 accused of conspiring with people like the man on the
5 telephone to possess with intent to distribute heroin. In the
6 second charge the defendant is accused of actually possessing
7 heroin like the heroin that was found in her suitcase.

8 With regard to these two charges, all that the
9 government asks of you at this time is that you sit here and
10 listen carefully to the evidence that is presented. At the
11 end of this case, I'll ask you to return the only verdict that
12 is consistent with that evidence and that is a verdict of
13 guilty.

14 THE COURT: All right, Ms. Harris.

15 MS. HARRIS: Norby Marin Marino did not know that
16 there were drugs in her suitcase.

17 THE COURT: Once again, you are not witnesses. Just
18 put this --

19 MS. HARRIS: In this case the evidence will show
20 that Norby Marin Marino did not know that there were drugs in
21 her suitcase. Before the DEA agents opened that suitcase in
22 room 166 in the Metro Motel, Ms. Morena had never seen those
23 perfume canisters before.

24 The evidence will show that those were not her drugs
25 and she is not guilty. You will hear from Ms. Marin Moreno

1 and you will hear that paramilitary in Colombia connected to
2 drug traffickers and government officials in Colombia have
3 killed Ms. Marin Moreno's father, two brothers and one of her
4 sons.

5 Two years ago those same paramilitaries were
6 responsible for the disappearance of two more sons. It is
7 those individuals and people associated with those individuals
8 who placed the drugs, who planted the drugs in Ms. Marin
9 Moreno's suitcase.

10 You will hear from Ms. Marin Moreno that since the
11 death and disappearance of her sons, she has been desperate
12 and distraught. She has been on a journey to find out the
13 truth about what happened to her sons, their true fate. She
14 wants to know if they have been kidnapped so she can figure
15 out a way to pay the ransom. She wants to know if they are
16 dead so she can give them a proper burial.

17 It's that journey, that mission that brought her to
18 the United States where many of the paramilitary leaders are
19 now jailed.

20 In Colombia, the paramilitary leaders who were in
21 jail are disclosing to the government and to the public their
22 crimes. They are telling people where the bodies are buried
23 so they can get more lenient sentences. She learned that and
24 came to the United States in an effort to get the information
25 about her sons from the leaders who are jailed here. But

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1 someone wanted to stop Ms. Marin Moreno from finding out the
2 truth. Someone wanted to stop her from searching for the
3 truth here and from searching for the truth in Colombia.

4 Now, Ms. Marin Moreno is a damaged person. She has
5 suffered a lot. And when you hear her testify and you see
6 her, you will see that in order to survive, she has had to
7 turn off some of her feelings, that in order to get by day by
8 day, she has become numb. And I want you to keep that in mind
9 when you hear from her.

10 To the government, this seems like an open and shut
11 case and when you hear from the government witnesses and the
12 DEA agents in their blue suits, you are going to think that
13 it's an open and shut case. Drugs in your suitcase, they are
14 yours, you are guilty, you go to jail. But we know that life
15 is never open and shut. Life is complicated and it's messy.
16 And when half your family has been killed by Colombian
17 paramilitary groups, the America rules and common sense just
18 don't apply. Life is different for Norby Marin Marino. It
19 doesn't make sense that a mother should lose three of her four
20 sons. It doesn't make sense that --

21 THE COURT: Counsel, let's get --

22 MS. HARRIS: You will hear from Ms. Norby Marin
23 Marion that in Colombia the rules of life are different.
24 Nothing happens as it should. And when you listen to the
25 government, I want you to keep in mind that real world

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1 Colombia, that Ms. Marin Moreno's real world is a very
2 different world.

3 By our standards, much of Ms. Marin Moreno's life
4 doesn't make any sense. It's messy. It's sad and it's
5 complicated. But one thing is for sure, you will hear from
6 the evidence that when Ms. Marin Moreno came to the United
7 States, she did not bring drugs. You will hear her testify
8 those were not her canisters, those were not her drugs and she
9 is not guilty.

10 Thank you.

11 THE COURT: All right, ladies and gentlemen, we'll
12 take a brief recess. I hope Mr. Kessler told you how these
13 doors operate but if someone takes one of those white cards
14 and puts it against that box with the red button on it, that
15 will deactivate the alarm and you just go right here to the
16 jury room.

17 We'll bring you back after a brief recess. You may
18 withdraw.

19 (Jury out at 11:10 a.m.)

20 THE COURT: All right, we'll take a 10 minute break.
21 If you are going to display any of your evidence on the
22 projector, if someone can gently take the monitors out of the
23 jurors' chairs and make sure that things are functioning.
24 We'll take a 10 minute break and get started.

25 (Recess.)

(Continued on next page.)

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1 THE COURT: For the benefit of the lawyers -- where
2 is Ms. Harris?

3 MR. KAZEMI: She is right outside. She will be
4 stepping in shortly.

5 (Pause.)

6 THE COURT: Just for the benefit of the lawyers, you
7 may or may not be aware that Mr. Kessler has had a medical
8 emergency so we are going to limp along as best we can without
9 him but Teresa Henry may be up. I've got an arraignment at
10 12:30 .

11 MR. NATHANSON: It's at noon. I'm going to cover
12 that for the assigned assistant.

13 THE COURT: You will.

14 Well, when your adversary appears, you can just hold
15 up your finger or something like that and let me know. We
16 probably won't take it until 12:30 during the luncheon recess.

17 I had one other question.

18 Is the government going to bring this gentleman up
19 who overheard this conversation on the phone in Colombia or
20 not?

21 MR. KAZEMI: We're not, your Honor but all the
22 government seeks to do is introduce the fact that the source
23 of information was a wiretap. It's irrelevant to the jurors'
24 analysis.

25 THE COURT: Do you have any problem with the fact

1 that it was a wiretap?

2 MS. HARRIS: Two; one is that the alleged purpose
3 for which it is being offered is for Agent Aceves' state of
4 mind.

5 THE COURT: His state of mind?

6 MS. HARRIS: That is the purported basis.

7 THE COURT: That is not the purpose of it at all.
8 It's to prove, simply to prove that it was a wiretap.

9 MS. HARRIS: He didn't hear the happen, your Honor,
10 at the time of the call.

11 THE COURT: I understand that.

12 MS. HARRIS: So we have a hearsay issue number one.
13 And number 2 --

14 THE COURT: It's really unfair. That's why I'm
15 questioning you rather carefully on it. To say that this was
16 an anonymous tip or to leave the jury with the impression that
17 this was an anonymous tip when you know pretty certainly that
18 it wasn't an anonymous tip is quite unfair.

19 So if you are not going to stipulate to it, I guess
20 we'll just have to think how it might be offered short of
21 bringing the gentleman up here from Colombia.

22 MR. KAZEMI: Well, your Honor --

23 THE COURT: Yes.

24 MR. KAZEMI: The defendant has put this issue in
25 play by claiming that --

1 THE COURT: I understand that and you can be
2 absolutely sure that if under the circumstances, Ms. Harris,
3 you suggest that this was anything like an anonymous tip, that
4 I'll come down on you like a ton of bricks because that would
5 be really unfair to the government in the circumstances but
6 we'll proceed as best we can.

7 MS. HARRIS: For the record, I just want to make
8 clear this is a wiretap of which I have never seen any
9 evidence of. It has not been --

10 THE COURT: I understand your argument and I'm
11 disposed to accept it but I'm not going to allow you to make
12 use of this circumstances in a manner that is unfair. That is
13 all.

14 MS. HARRIS: I understand.

15 THE COURT: You ask for fairness and the government
16 is entitled to ask for fairness too.

17 MR. KAZEMI: Your Honor, may I --

18 THE COURT: Let's not go further with it. We are
19 keeping the jury waiting. We'll take it up at some
20 appropriate time.

21 MR. KAZEMI: Early in Agent Aceves' testimony I
22 simply seek to elicit the fact that the source was a wiretap.

23 THE COURT: I know and I'm going to sustain an
24 objection to it because it's hearsay.

25 MR. KAZEMI: It's not being offered for its truth.

1 The reason Agent Aceves acted so quickly based on the source
2 of information was just the fact that it was a wiretap as
3 opposed to an anonymous tip. Had it been an anonymous tip, he
4 may not have acted so quickly. The DEA receives anonymous
5 tips all the time. In this case they had a wiretap which is
6 why Agent Aceves moved so quickly to room 166.

7 THE COURT: I'll consider the argument and any
8 others that you come up with.

9 Would you ask the jury to come in.

10 Your argument is why did you move so fast, agent?
11 Well, because I was under the impression that the information
12 came from a wiretap.

13 And I'll instruct the jury just because the agent
14 said it was under his impression doesn't mean that that was
15 the case.

16 Maybe there is some way to get it before the jury
17 but it sounds to me that what you really will be eventually
18 attempting to do is to say how implausible Ms. Morena's
19 testimony is since why would they not just make an anonymous
20 tip rather than use a wiretap which is a use of the
21 information for its truth.

22 MR. KAZEMI: That's exactly right, your Honor.

23 THE COURT: If I'm exactly right then you are not
24 going to offer it.

25 (Jury in at 11:45 a.m.)

1 THE COURT: All right, ladies and gentlemen, come on
2 in and have a seat.

3 The evidence monitors are up so don't trip on them
4 or tear your clothing on them. That's not why we put them up.

5 Actually, these monitors turn. If they are in your
6 way, you can sort of get them out of your way and I activate
7 them from up here. You don't need to pay any attention to
8 them until they are on.

9 Would you call your first witness.

10 MR. KAZEMI: Yes. The government calls DEA Special
11 Agent Salvador Aceves.

12 THE COURT: Come on up, sir, and be sworn.
13 SALVADOR ACEVES, having been called as a
14 witness, first being duly sworn, was examined and
15 testified as follows:

16 THE CLERK: Please be seated.

17 State your name for the record.

18 THE WITNESS: Salvador Aceves, A-C-E-V-E-S.

19 THE COURT: I think that microphone may not be on.
20 Is it on?

21 THE CLERK: Yes, your Honor.

22 THE COURT: So the microphone picks up your voice at
23 a distance so you don't have to have it right in your face as
24 it were.

25 All right, go ahead, counsel.

1 DIRECT EXAMINATION

2 BY MR. KAZEMI:

3 Q Good morning, agent.

4 By whom are you employ?

5 A The Drug Enforcement Administration.

6 Q Is that also known as the DEA?

7 A Yes.

8 Q What is your title?

9 A Special Agent.

10 Q How long have you been a DEA Special Agent?

11 A A little over three and a half years.

12 Q Directing your attention to the morning of July 31, 2008,
13 where were you assigned at that time?

14 A The New York Field Division.

15 Q Are you involved in the investigation of the defendant in
16 this case, Norby Marin Marino?

17 A Yes.

18 Q Are you a case agent for this investigation?

19 A Yes.

20 Q What does case agent mean?

21 A I'm the lead agent in the investigation.

22 Q Could you please tell the Court how you came to be
23 involved in this investigation?

24 A On the morning of July 31 I received information from an
25 Agent Richard Walsh who is also with the DEA. He is assigned

1 to the Bogota country office. He called me with information
2 regarding a heroin courier that was located in New York.

3 Q Was --

4 THE COURT: Hold on.

5 I'm going to see if we can do this without the
6 microphone because it alters your voice.

7 Keep your voice up.

8 Q Was the source of this information an anonymous tip?

9 A No.

10 Q Does DEA receive anonymous tips regularly?

11 A Yes, we receive anonymous tips on a regular basis, dozens
12 if not maybe -- there are just many a day.

13 Q Does DEA typically act on anonymous tips?

14 A Anonymous tips are taken and recording but an anonymous
15 tip is usually unreliable and usually has vague information
16 from the person.

17 MS. HARRIS: Objection, your Honor.

18 THE COURT: I think we have gone far enough into
19 where this information came from.

20 Go ahead.

21 What is next?

22 Q Was this information obtained as part of a broader
23 investigation?

24 A Yes.

25 Q What information did Agent Walsh provide you with?

1 MS. HARRIS: Objection.

2 MR. KAZEMI: Not being offered for its truth,
3 your Honor.

4 THE COURT: As the lawyer just said, it's not being
5 offered for its truth.

6 If this agent down this Colombia wants to come up
7 here and testify under oath and be subject to
8 cross-examination, then we can consider whatever he says as
9 though it were testimony, but at this point we are simply
10 receiving this information that was passed on to this agent
11 for the fact that the agent learned this information as just
12 sort of background information to explain how it is he came to
13 encounter the defendant.

14 For example, somebody in Colombia used the word
15 Norby. That doesn't mean that this defendant is the Norby
16 that was referred for in the conversation. That is something
17 that could only be discovered if somebody got up here and
18 swore the name Norby was used and there was cross-examination
19 about it.

20 But the fact that the agent was told and heard
21 something about a Norby explains why it is the agent was, if
22 he was, looking for somebody with the name Norby. That is
23 all.

24 Go ahead.

25 Q What information did Agent Walsh provide you with?

1 A On that morning I was told that there was a heavy set
2 Hispanic woman named Norby at the Metro Motel on Queens
3 Boulevard, 7300 Queens Boulevard, in room 166 with
4 approximately 1200 grams of heroin. I was given her phone
5 number and I was told that she would be meeting with an
6 individual known only as Pintor.

7 THE COURT: What was the information you were given
8 about a phone number?

9 THE WITNESS: Yes, it's in the notes that I took
10 that day as well. There was a phone number for the defendant
11 as well.

12 THE COURT: You were given a phone number?

13 THE WITNESS: Correct.

14 THE COURT: And I interrupted what you were saying
15 about Pintor.

16 How did that name come up?

17 THE WITNESS: Yes, your Honor, I was told that
18 Pintor would contact the defendant in some way in order to
19 arrange the exchange for the 1200 grams of heroin. In
20 exchange we were told that Pintor and an associate of his
21 might be giving her approximately \$10,000 which would probably
22 be the courier cost, not the cost of the heroin. It would be
23 much more than that, and that he would contact her prior to
24 meeting with her. And over the phone he would say that he was
25 calling on behalf of El Tio, which just means uncle, he was

1 calling on behalf of the uncle. That was the code for her to
2 know that this was the person to be contacting her and that
3 they were to proceed as planned.

4 Q And El Tio means uncle in Spanish?

5 A Yes.

6 Q How do you know that?

7 A I speak Spanish.

8 Q How did you learn Spanish?

9 A Aside from my mother and father both being from Mexico, I
10 spent a little over two years in Costa Rica when I was in the
11 Peace Corps.

12 Q How many calls did you have with Agent Walsh?

13 A I couldn't recall exactly how many. We were in almost
14 constant communication that morning. He was calling me -- as
15 he received more information, he was calling me to update me
16 on a regular basis.

17 Q Did Agent Walsh tell you when the suspect would be
18 arriving in the United States?

19 A When he contacted me that morning, maybe around 10:00, I
20 had been told that the defendant was already here.

21 Q How quickly was the information being passed from Agent
22 Walsh to you?

23 A Almost realtime. I was told that he was -- as he was
24 getting information, he was giving it to me as quickly as
25 possible. He wanted me to get there as quickly as possible

1 and intercept the heroin before it was given to Pintor and
2 left the hotel. We knew where it was. That was our
3 opportunity to act right then and there.

4 Q Did you attempt to follow up on the lead obtained from
5 this non-anonymous source?

6 MS. HARRIS: Objection.

7 THE COURT: Yes, I'll sustain it.

8 Go ahead.

9 What is next?

10 Q Did you attempt to follow up on the lead obtained from
11 the source of information?

12 A Yes.

13 Q How did you do so?

14 A As soon as I was -- I gathered my things, I made my way
15 out to Queens Boulevard, 7300, the Metro Motel, and I
16 established surveillance.

17 Q Did you establish surveillance alone or as part of a
18 team?

19 A As part of a team.

20 Q How was this team assembled?

21 A Would you like the names of the individuals who were
22 there that day?

23 Q Sure.

24 A Elizabeth O'Connor, Ramon Acie, David Samilo, John
25 Francolla, Jeff Senn and Orst Zacharizovich. I think that's

1 all.

2 Q Was there a supervisory special agent for this team?

3 A Yes, Liz O'Connor.

4 Q Is she a DEA special agent?

5 A Yes.

6 Q So there came a time when you established surveillance at
7 the Metro Motel?

8 A Yes.

9 Q Approximately when was that?

10 A I was there by about noon.

11 Q Can you please describe the layout of the Metro Motel to
12 the?

13 A It is on the south side of Queens Boulevard. As you face
14 the motel, there is a lobby to the right, a breezeway to the
15 left that you can drive through. As you drive in, there are
16 motel rooms on the left and a slanted parking lot in front of
17 them or slanted parking directly in front of them. It opens
18 up into a large square gravel parking lot that is enclosed.

19 Q Were you the first agent to establish surveillance at the
20 Metro Motel?

21 A Yes.

22 Q In what location did you establish surveillance?

23 A In the gravel parking lot but maybe about 20 feet or so
24 away from room 166. I was directly in front of it facing room
25 166.

1 Q I'm going to show you what has been marked as
2 Government's Exhibit 1 A for identification and you should
3 have a copy in front of you.

4 I'm going to put a copy up on --

5 THE COURT: What are you going to do?

6 Hold on. Hold on.

7 What is the exhibit?

8 MR. KAZEMI: 18 for identification.

9 THE COURT: Don't put it up on the screen until you
10 have offered it in evidence if there is any objection.

11 MR. KAZEMI: Yes, your Honor.

12 Q Do you recognize Exhibit 1.

13 A Yes.

14 Q What is that?

15 A This is a picture of the Metro Motel from Queens
16 Boulevard looking in at the hotel.

17 Q That is a true and accurate depiction of the Metro Motel?

18 A Yes.

19 Q The entry area as it appeared on July 31, 2008?

20 A Yes. There may have been more or less vehicles but it's
21 the same.

22 MR. KAZEMI: Your Honor, I move to admit the Exhibit
23 1A into evidence.

24 THE COURT: If there is no objection, I'll receive
25 it and mark it.

1 MS. HARRIS: No objection.

2 MR. KAZEMI: I believe you have a copy as well.

3 THE COURT: What I want to do is physically mark
4 into evidence the exhibit that we'll be using and which will
5 be available to the jury during its deliberations.

6 So in doing that, I am marking on this exhibit
7 sticker with my initials in small letters ev to indicate that
8 this is an exhibit in evidence.

9 Now if you want to put it up on the projector, I'll
10 display it to the jury.

11 MR. KAZEMI: Thank you, your Honor.

12 THE COURT: Get it in place and then I'll -- is that
13 where you want it?

14 Okay, counsel?

15 MR. KAZEMI: Yes, your Honor.

16 THE COURT: Okay.

17 Anyone having any difficulty seeing that?

18 Go ahead.

19 Q Agent Aceves, can you please describe the layout of the
20 Metro Motel using this picture as an aid?

21 A As I was saying, the lobby is right there on the right
22 under the words Metro Motel. To the left is the breezeway
23 that goes in, diagonal parking directly in front of that.
24 Beyond that, it opens up into a large -- not that large but a
25 larger square parking lot that opens up more. Once you pass

1 the building to the left, it opens up.

2 THE COURT: Is this looking, is it the photographer
3 standing more or less where Queens Boulevard is?

4 THE WITNESS: Yes.

5 THE COURT: A looking into the parking area and the
6 entrance -- at an entrance to the motel?

7 THE WITNESS: Yes, your Honor.

8 THE COURT: Okay.

9 Go ahead.

10 Q Agent Aceves, please take a look at what has been marked
11 for identification as Exhibit 1 B.

12 Do you recognize that photograph?

13 A Yes. This is another photograph of the Metro Motel.
14 It's a closer photograph of the rooms to the left. There is
15 an orange cone directly in front of room 166 just before the
16 gravel parking lot.

17 Q Is that photograph an accurate description of the Metro
18 Motel as it appeared on July 31, 2008?

19 A Yes.

20 MR. KAZEMI: Your Honor, I'd move to admit.

21 THE COURT: Do you have self of these photographs?

22 MR. KAZEMI: Yes.

23 THE COURT: Because we might as well deal with them
24 in terms of offering them in evidence as a group and then I'll
25 mark all of them.

1 What other exhibits are you offering?

2 Q Agent Aceves, if you can review --

3 A Okay.

4 Q 1E through?

5 A 1C. 1C is again --

6 Q Just review them, Agent Aceves, through 1E. I'm sorry,
7 1H.

8 THE COURT: Offer them because I anticipate there is
9 no objection. If there isn't, then I'll mark them all and you
10 can take the agent through them.

11 So which are you offering now?

12 MR. KAZEMI: 1B through 1H, your Honor.

13 THE COURT: If there is no objection, I'll receive
14 them and mark them.

15 MS. HARRIS: No objection, your Honor.

16 (So marked in evidence as Government's Exhibit 1B
17 through 1H.)

18 (Pause.)

19 THE COURT: All right. They are received and
20 marked.

21 MR. KAZEMI: Thank you, your Honor.

22 Q Agent Aceves, directing your attention to Exhibit 1B, can
23 you please describe this photograph and what it depicts?

24 THE COURT: You can put it up on the screen now that
25 they are in evidence.

1 A It is a closer picture of the motel rooms, they are on
2 the left. As you can see, there is an orange cone on the
3 picture towards the end of the sidewalk just before the gravel
4 parking lot that is directly in front of room 166.

5 THE COURT: So again, this is looking away from
6 Queens Boulevard from the entrance, is that right?

7 THE WITNESS: Yes, your Honor. I walked through the
8 breezeway into the parking area. Queens Boulevard is still to
9 the back and it's looking away from Queens Boulevard and that
10 sidewalk is perpendicular to Queens Boulevard.

11 Q Now turning to Exhibit 1C, can you please describe this
12 photograph and what it depicts?

13 A This is a photograph from the gravel parking lot now
14 looking back towards Queens Boulevard and the breezeway.
15 Again the orange cone is placed directly in front of room 166.

16 Q Now one D.

17 A Photograph 1D in this picture, you can see the orange
18 cone directly in front of the open door that is room 166. You
19 see the gravel parking lot. Again, Queens Boulevard is behind
20 to the back and there is a blue vehicle parked approximately
21 where my surveillance vehicle was parked that day on the left
22 of the picture.

23 Q That is this vehicle?

24 A Yes.

25 Q The vehicle to the right of the picture?

1 A Yes, the picture, the vehicle on the right, far right,
2 that's approximately where my vehicle was parked that day and
3 the orange cone is directly in front of 166.

4 Q Can you please describe what is depicted in Exhibit 1E?

5 A 1E is the exterior door of room 166.

6 Q That is the door that you were observing on July 31?

7 A That is the day I was watching room 166, on July 31.

8 Q So room 166 had an exterior door as depicted in 1E?

9 A Yes.

10 Q Did it have any other doors to your knowledge?

11 A Yes.

12 Q What was that door?

13 A There was also an interior door that led to an interior
14 corridor.

15 Q I'm now showing you Exhibit 1F.

16 Do you recognize that photograph?

17 A Yes.

18 Q What does that depict?

19 A The interior corridor of the Metro Motel. Room 166 is at
20 the very end on the right. If you look closely, there is a
21 cleaning cart at the end of the hallway. Just beyond that,
22 there is a silver ashtray which was placed directly in front
23 of room 166.

24 Q There are just two more.

25 A Did I say the room was on the far right or the far left?

1 It was at the end on the right.

2 Q The far right?

3 A Correct.

4 Q Now Exhibit 1G.

5 Can you describe that photograph, please?

6 A This is a picture of 166 looking in and through the room.
7 And you can see the interior door to the interior corridor is
8 open on the other side.

9 THE COURT: Did you take these photographs on the
10 day that you were conducting the surveillance or was this at a
11 later point?

12 THE WITNESS: This was at a later point, your Honor.

13 THE COURT: So this isn't necessarily what the
14 interior looked like the day you were there?

15 THE WITNESS: No, your Honor, you can see the bed is
16 still unmade. I think the chambermaids hadn't finished
17 turning over the room yet.

18 THE COURT: Go ahead, counsel.

19 Q And one last picture, Agent Aceves.

20 1H, can you please describe that photograph?

21 A This is the picture from an interior corridor looking
22 through the interior door into the room and out through the
23 exterior door of 166 to the diagonal parking lot, parking
24 spaces.

25 THE COURT: So these are the two ways of getting

1 into the room, one from the parking lot and one through the
2 door through which the photograph is being taken?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Okay.

5 Q Turning back to July 31, 2008, what door were you
6 observing from then?

7 A The exterior door of 166, the one facing the diagonal
8 parking.

9 Q Did you have a view of the interior door from your
10 vantage point?

11 A No.

12 Q When you established surveillance of room 166, were you
13 initially aware that room 166 had an interior door?

14 A No.

15 Q You testified earlier that other agents joined you in
16 surveillance.

17 When approximately did they arrive?

18 A They arrived one at a time but roughly around 12:30 most
19 of the agents were there and were trickling in. As I said, we
20 received information and we tried to get to the location as
21 quickly as possible.

22 Q Why were there so many agents involved?

23 A We always have that many agents. We always try to have
24 as many agents as possible to insure our safety.

25 Q Who was leading the team?

1 A Elizabeth O'Connor.

2 Q Were all the agents wearing uniforms?

3 A No, we -- we are not uniformed officers. We don't wear
4 uniforms. If we conduct surveillance in our uniform or suit
5 or clean look, we would alert traffickers to the presence of
6 police. I think the last time I was in this court, I had a
7 beard. We try to conceal the fact that --

8 MS. HARRIS: Objection.

9 THE COURT: Yes, I think I don't need you to go into
10 that.

11 What is next?

12 Q Were the agents in marked cars or unmarked cars?

13 A Unmarked cars.

14 Q Was there a tactical plan for approaching room 166?

15 A After it was established that there was an interior door
16 that we were initially unaware of, yes.

17 Q How did your team members communicate with each other as
18 they arrived at the surveillance location?

19 A Via radio and cell phone.

20 Q And they continued communicating with each other by this
21 method?

22 A Yes.

23 Q Did there come a time when you observed an individual
24 enter room 166?

25 A Yes.

1 Q This was from your vantage point in the Metro Motel
2 parking lot?

3 A Yes.

4 Q So she entered through the outer door?

5 MS. HARRIS: Objection.

6 THE COURT: I'll permit it.

7 Q What door did she enter through?

8 A I saw the defendant enter through the exterior door of
9 166.

10 Q What time is that, approximately?

11 A It was around 12:30.

12 Q How would you describe that individual?

13 A As a heavy set Hispanic woman.

14 Q That is the same description that was obtained from the
15 Colombian source of information?

16 A Yes.

17 Q Was the individual you observed entering room 166 later
18 identified as the defendant in this case, Norby Marin Marino?

19 A Yes.

20 Q Is she sitting in this courtroom today?

21 A Yes.

22 THE COURT: Wait a minute.

23 There is a more straightforward way of asking.

24 Do you see the person who you saw this evening or
25 that day rather here in the courtroom or not?

1 THE WITNESS: Yes, your Honor.

2 THE COURT: And could you indicate where she is?

3 THE WITNESS: She is seated next to Ms. Harris
4 wearing the green sweater and brown shirt.

5 THE COURT: The record will reflect the
6 identification of the defendant.

7 Go ahead.

8 Q When the defendant entered the room, was she carrying
9 anything?

10 A I saw in her hand some small plastic bags; one, maybe two
11 small black plastic bags, something one might get from a deli.

12 Q What did she do -- what did she do as she entered the
13 room?

14 THE COURT: What did she do?

15 MR. KAZEMI: Yes, your Honor.

16 A She entered the room. Moments later she reappeared from
17 the open door. She looked around, she looked up towards the
18 breezeway, down towards the parking lot holding a cell phone
19 to her ear. I don't know if she was using it at the time or
20 just about to make a call. She looked -- she returned to the
21 room. She reentered her room and then stepped back out to the
22 street, looked up towards the breezeway, down to the parking
23 lot and then reentered her room and closed the door.

24 THE COURT: Still with the cell phone at her ear or
25 that was only the first time?

1 THE WITNESS: No, the second time as well,
2 your Honor. It was all very briefly.

3 THE COURT: Go ahead.

4 What is next?

5 Q Did there come a time when a member of your surveillance
6 team learned that there was an interior door to room 166?

7 A Yes.

8 Q Do you recall which members of the surveillance team
9 learned of the interior door?

10 A I don't recall specifically which one it was but I
11 believe it was either Elizabeth O'Connor or Ramon Acie.

12 Q Did he or she tell you how they came to learn about the
13 interior door?

14 MS. HARRIS: Objection.

15 THE COURT: Yes. We can get the individual who
16 learned about it here to testify about what brought this to
17 his or her attention.

18 Go ahead.

19 What is next?

20 The objection is sustained.

21 Q So the defendant -- so which door did the defendant enter
22 through?

23 A The exterior door.

24 Q And that was the door you were watching?

25 A Yes.

1 Q And when you saw the defendant enter room 166 through the
2 exterior door, you did not know there was an interior door at
3 that time?

4 A No.

5 THE COURT: Is that -- what were you looking for at
6 this point?

7 Why didn't you go up and just apprehend the
8 defendant as soon as you saw her?

9 THE WITNESS: Because, your Honor, we were told that
10 another participant would be arriving with a large sum of
11 money.

12 THE COURT: So you were waiting for another person
13 to enter the room?

14 THE WITNESS: Yes, we were told that she would make
15 contact with someone named Pintor and that that would be the
16 person who she would be delivering the narcotics to. We
17 wanted to arrest as many people as possible.

18 THE COURT: Go ahead, counsel.

19 Q Did you devise a strategy for approaching the room?

20 A Yes, after we discovered that there was an interior door
21 and we had only been watching the exterior door, we decided we
22 needed to move quickly.

23 Q What did you decide to do at that point?

24 A Which decided that Agent Elizabeth O'Connor would ask one
25 of the chambermaids to knock on the door of room 166.

1 Q Do you recall what the chamber made looked like?

2 A I recall that she was a relatively short woman with dark
3 hair. I never really focused on her again. I was focusing on
4 166.

5 Q Did the chamber made knock on the door?

6 A Yes.

7 THE COURT: I take it you had some plan in mind.
8 Tell us what the plan was?

9 THE WITNESS: The plan was to have the defendant
10 open the door, speak with the defendant and be able to see
11 whether or not Pintor or somebody else was already inside the
12 room, whether or not the drug transaction was taking place,
13 find out if the defendant would consent to a search of her
14 belongings.

15 THE COURT: Go ahead.

16 What is next?

17 Q What happened after the chambermaid knocked on the door?

18 A The chambermaid knocked on the door, the defendant opened
19 the door. Norby, the defendant, attempted to close the door
20 as soon as the defendant saw Agent O'Connor. Agent O'Connor
21 pushed the door open, entered the room, entered into a
22 struggle with the defendant. As Agent Samilo was following
23 her into the room, Agent Samilo, Agent David Samilo had to
24 help Agent O'Connor.

25 THE COURT: Did you yourself see this?

1 THE WITNESS: Yes.

2 THE COURT: Just tell us what you saw. When you say
3 entered into a struggle, tell us what you saw?

4 THE WITNESS: When I saw -- I saw Agent O'Connor
5 push the door open and enter the room. I saw Agent Samilo
6 enter the room behind her. I entered the room and saw Agent
7 O'Connor in a semi-wrestling match with the defendant. I saw
8 David Samilo assist Agent O'Connor in subduing the defendant.

9 I then conducted a security sweep of the hotel room
10 to make sure that nobody else was in the room, went to the
11 bathroom, the closets, the shower curtain just to make sure
12 that somebody else wasn't in there that could be a danger to
13 us.

14 THE COURT: Did you see who initiated this struggle,
15 whether the agent was tackling the defendant or the defendant
16 was tackling the agent?

17 THE WITNESS: It appeared that the defendant
18 struggled immediately.

19 THE COURT: Sorry?

20 THE WITNESS: It appeared that the defendant
21 struggled immediately.

22 THE COURT: Struggled, meaning what, attempted to
23 leave the room?

24 THE WITNESS: She attempted to evade Agent O'Connor.

25 THE COURT: Go ahead.

1 What is next?

2 Q Was the defendant handcuffed?

3 A Yes.

4 Q Why was that?

5 THE COURT: At what point did this happen?

6 THE WITNESS: As soon as the agents were able to
7 subdue the defendant, she was handcuffed.

8 Q Why was she handcuffed?

9 A For our safety.

10 Q Is this DEA protocol?

11 MS. HARRIS: Objection.

12 THE COURT: Overruled.

13 You can answer the question.

14 Is this the general practice where you I make an
15 arrest?

16 THE WITNESS: Yes.

17 THE COURT: All right, go ahead.

18 What is next?

19 Q Please describe which agents were now in the room with
20 the defendant?

21 A Agent Samilo, Agent O'Connor and myself.

22 Q At that point once you were in the room, did you attempt
23 to speak with the defendant?

24 A Yes.

25 Q And does the defendant speak English?

1 A I don't know. If she does, she did not on that day.

2 Q So what language were you speaking with the defendant?

3 A Spanish.

4 Q Did any of the other agents speak with the defendant?

5 A No, they spoke mostly through me. I know that Agent
6 O'Connor knows a few words. Most agents in New York, police
7 officers in New York learn a little bit of Spanish but most of
8 the speaking was through me.

9 Q Did there come a time when you asked the defendant if you
10 could search her bags?

11 A Yes.

12 Q What happened next?

13 THE COURT: This -- you asked this in Spanish?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: Do you remember what you said?

16 THE WITNESS: I asked if we could search her bags in
17 the room.

18 THE COURT: And what did the defendant say in
19 response?

20 THE WITNESS: She consented without hesitation.

21 Q I'm showing what has been marked for identification as
22 Government's Exhibit 2.

23 Can you please review that document.

24 A After I received verbal consent, yes. I'm sorry.

25 Q Do you recognize that document?

1 A Yes.

2 Q What is that document?

3 A This is a written consent to search form.

4 Q Did you provide that document to the defendant?

5 A Yes.

6 Q Is that form signed?

7 A Yes.

8 Q Is that the defendant's signature at the bottom of the
9 form?

10 A Yes, the defendant -- it's the defendant's signature, my
11 signature and Agent O'Connor's signature.

12 Q Did you witness her signing that document?

13 A Yes.

14 MR. KAZEMI: Your Honor, I move to admit
15 Government's Exhibit 2.

16 THE COURT: All right, if there is no objection. Is
17 this document in Spanish or English?

18 THE WITNESS: It's in both, your Honor.

19 THE COURT: We can mark the stickered document.

20 It's received in evidence and marked.

21 Don't consult with your witness during the
22 examination.

23 MR. KAZEMI: I apologize, your Honor.

24 THE COURT: Okay, it's received and marked.

25 (So marked in evidence Government's Exhibit 2.)

1 MR. KAZEMI: I'm publishing what has been marked as
2 Government's Exhibit 2.

3 Q That is the document that was signed by the defendant?

4 A Yes.

5 Q And what does that document say?

6 A In sum and substance what the translation of the Spanish
7 writing that I wrote in there says I -- it says that Norby
8 Marin Marino has been asked by the officials if they can
9 search my bags and my room.

10 The next line is: They have not threatened me in
11 any way and I give them permission to search.

12 Q What did your team do after?

13 THE COURT: Excuse me. The portions that are in
14 English, you say there was a Spanish translation?

15 THE WITNESS: That's what is written in Spanish
16 underneath the English.

17 THE COURT: In other words, you wrote on the form
18 the translation of the questions?

19 THE WITNESS: Yes, your Honor. At that moment I did
20 not have a Spanish form so I wrote this in Spanish to the best
21 of my ability at that moment so that she could have something
22 in her native language to sign despite the fact she already
23 gave verbal consent.

24 THE COURT: You handed her that to read and she
25 signed it?

1 THE WITNESS: Yes.

2 Q Have you previously worked as an English to Spanish
3 translator, agent?

4 A Yes.

5 Q What did the agents do after the defendant signed this
6 form?

7 A I'm sorry?

8 Q What did the agents do after the defendant signed this
9 form?

10 A We began searching her luggage, her bags and the room.

11 Q During your search, did you find a cell phone?

12 A Yes.

13 THE COURT: Where did you find the cell phone?

14 THE WITNESS: I don't recall where it was found or
15 who found it but there was a cell phone in the room that was
16 brought to my attention after it was found.

17 THE COURT: After it was found.

18 Okay.

19 Q I'm showing you what has been marked a Government's
20 Exhibit 3.

21 Do you recognize that item?

22 A Yes.

23 Q What is it?

24 A That was the cell phone that was in the defendant's
25 possession.

1 Q Is that in substantially the same condition it was in
2 when you recovered it from the defendant?

3 A Yes.

4 MR. KAZEMI: Your Honor, I move to admit
5 Government's Exhibit 3.

6 THE COURT: If there is no objection, it will be
7 received and marked.

8 Are you able to say whether this is the same cell
9 phone you saw the defendant listening to when you first saw
10 her or not?

11 THE WITNESS: From my vantage point, the phone would
12 have been too small and on the opposite side of her head.

13 THE COURT: So you can't tell whether this is the
14 same or not?

15 THE WITNESS: No, your Honor.

16 THE COURT: Okay.

17 Well, you have a problem here. I'm receiving and
18 marking the exhibit in evidence as Government's Exhibit 3 but
19 just for purposes of clarity, I take it this see-through
20 envelope here is an evidence envelope that you used to keep
21 evidence that you obtained and then you seal it, is that how
22 it works?

23 THE WITNESS: Yes, your Honor. It's only been
24 opened recently for this purpose.

25 THE COURT: Okay.

1 So what is in evidence is the contents of the
2 envelope, not the envelope itself.

3 Q While you were in the room, did the defendant receive any
4 phone calls on that cell phone?

5 A Yes.

6 Q Was it more than one call?

7 A Yes.

8 Q Do you recall how many phone calls she received?

9 A Approximately four.

10 Q When did she receive the first call?

11 A I think she -- I believe she received the first call
12 around the time we were entering the room.

13 Q Was it answered?

14 A No.

15 THE COURT: So was there some kind of signal from
16 the cell phone? How do you know?

17 THE WITNESS: There is a ring but at that time, that
18 was -- the last thing on our mind was a phone ringing when we
19 are trying to subdue the defendant.

20 THE COURT: But you heard a cell phone ringing?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: Go ahead.

23 What is next?

24 Q Did you ask the defendant to check her voice mail?

25 A Yes.

1 Q Did she do so?

2 A I recall asking her to check her voice mail. I don't
3 recall what happened. I don't recall if there was a voice
4 mail. I don't recall if she had voice mail set up but that's
5 it.

6 Q Did she receive another call?

7 A Yes.

8 Q Approximately when did she receive the second call?

9 A Maybe 15 minutes or so after the first call.

10 Q Was it answered?

11 A No.

12 Q What happened next?

13 A After that, we asked the defendant to return the call of
14 the caller.

15 Q Why did you ask the defendant to return the call?

16 A We believed that the person trying to contract her was
17 the person scheduled to meet with her to receive the heroin.

18 Q Did the defendant agree to return the call?

19 A Yes, the defendant agreed to return the call and to have
20 it recorded.

21 Q Did there come a time when the defendant called back the
22 caller?

23 A Yes, she called back the caller and at the same time that
24 she was calling him, he was calling her. She answered the
25 incoming call waiting and we recorded the short conversation

1 between the defendant and the caller.

2 Q What device did you use in order to record the call?

3 A A small digital recorder with the earpiece that goes next
4 to the phone.

5 Q How many calls did you record on this device?

6 A Two.

7 Q Agent Aceves, I'm now going to show you what has been
8 previously marked for identification as Government's
9 Exhibit 8.

10 Do you recognize this item?

11 A Yes, this is the CD I made of two recordings that were
12 made that day. It's my initials at the top of the CD.

13 Q How did you make that CD?

14 A I downloaded the digital recorder into the case file that
15 we have on line for all our cases into the specific case
16 specific case file for this case. From that case file, I
17 burned the CD.

18 Q Did you personally download the digital recording device
19 to the computer or case file?

20 A Yes.

21 Q Did you personally burn the CD from the case file?

22 A Yes. These are my initials at the top of the CD.

23 MR. KAZEMI: Your Honor, I move to admit
24 Government's Exhibit 8 into evidence.

25 THE COURT: Okay, I take it since then you probably

1 listened to what got onto the CD?

2 THE WITNESS: Yes, your Honor. Actually, that day
3 as it was being recorded, I stood next to the defendant and
4 listened live to the calls as well. I've since then listened
5 to the calls again.

6 THE COURT: So what is on the CD is precisely what
7 you heard on the phone or overheard on the phone?

8 THE WITNESS: On the second call there is mostly a
9 one-sided conversation because the earpiece --

10 THE COURT: But the words are the same?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: So you were successful in burning the
13 CD, something I'm not always successful at.

14 It's received in evidence and marked.

15 Are you going to play that at this point or not?

16 MR. KAZEMI: Yes, your Honor. First I'd like to
17 read a stipulation into the record.

18 THE COURT: If it relates to this, maybe the best
19 thing to do is take the luncheon recess.

20 Get everything set up. I have another matter that I
21 am going to deal with during the luncheon recess.

22 So we'll take the break now.

23 We'll start again at 1:30.

24 I'm ask you to be back in the jury room at 1:30 and
25 please be on time because we can't get started until all of

1 you are here.

2 Don't talk about the case among yourselves or permit
3 anyone else to talk to you.

4 If you call home, just tell them you've been
5 directed not to talk about the case. And if any pesky
6 relative tells you oh, come on, tell me what is happening and
7 you need help, let us know and I'll get the point across to
8 whoever doesn't get it.

9 So have a good lunch.

10 We'll see you back here in the jury room at 1:30.

11 (Jury out at 12:30 p.m.)

12 THE COURT: So how are you going to play this,
13 through this presentation?

14 MR. NATHANSON: Yes, your Honor, off the prosecution
15 laptop.

16 MR. KAZEMI: The computer has already been
17 configured to play.

18 THE COURT: So all I need to do is permit the
19 prosecution laptop to do its thing.

20 This is a DVD but it's in your laptop?

21 MR. NATHANSON: That's correct.

22 THE COURT: Do you have copies?

23 MR. KAZEMI: I have copies for all the jurors and
24 the defense table.

25 THE COURT: Why don't you mark those or one of them

1 for identification and then you can put them face down on the
2 jurors' seats and I'll instruct them to attend to what they
3 are listening to rather than what is in the transcript.

4 You'll hand it up.

5 (Whereupon, there was a luncheon recess.)

6 (Continued on next page.)
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1 (Whereupon, the afternoon session began at 1:40
2 p.m.)

3 THE COURT: If we are ready to continue.

4 MR. KAZEMI: Yes, your Honor.

5 THE COURT: I would you ask the jury to come on in.

6 MR. KAZEMI: Would you like Agent Aceves in the box
7 when the jury comes in?

8 THE COURT: For purposes of the record, we are
9 working without some of the court reporter's equipment but we
10 are keeping a record of the proceedings.

11 I think where we broke off, I had marked into
12 evidence what was described as a disc reproducing the contents
13 of a telephone call.

14 I've also in your absence, ladies and gentlemen,
15 marked for purposes of identification a document which was on
16 your chairs when you came in which includes what I believe the
17 parties have agreed is a transcript in both Spanish and
18 translated into English of what can be heard on the tape
19 recording.

20 There is a procedural instruction that I'm required
21 to give you before we listen to this which is that the
22 evidence in the case is what can be heard on the disc not what
23 is written in the transcript if only because the transcript
24 doesn't convey such matter as how loud people are talking, how
25 fast and if you perceive any difference between what you are

1 hearing on the tape recording and what is written down in the
2 transcript, it's what you hear on the tape recording that is
3 the evidence that controls.

4 All right, do you want to go ahead now and play the
5 tape recording?

6 MR. KAZEMI: Yes, your Honor.

7 Just for the Court's benefit, if I can issue just
8 refresh the jury's memory as to what happened leading up to
9 the recording on the phone call very briefly, your Honor.

10 THE COURT: Yes.

11 DIRECT EXAMINATION (Continued)

12 BY MR. KAZEMI:

13 Q Agent Aceves, you previously testified there were two
14 phone calls neither of which were recorded?

15 A Yes.

16 Q Both of those phone calls were received from the same
17 incoming caller?

18 A It appeared to be the same phone number.

19 Q And this was the third phone call?

20 A Correct.

21 Q This was the call that was recorded?

22 A Correct, it was the first of the two that were recorded.

23 THE COURT: How did you determine that it was the
24 same incoming caller? Was it some form of caller ID on the
25 cell phone?

1 THE WITNESS: Yes. If you look at the phone, it's
2 not a flip phone or anything the screen. It's right on the
3 phone. As the phone is ringing, it shows the phone number.

4 THE COURT: You looked at the screen and saw the
5 number?

6 THE WITNESS: Yes.

7 THE COURT: On each of these calls?

8 THE WITNESS: Yes, not the very --

9 THE COURT: How about the one where it was, you
10 could hear it but you didn't know where it was coming from?

11 THE WITNESS: Correct, not on that call, your Honor.

12 THE COURT: Was there some mechanism in the cell
13 phone that saved where the earlier call came from, saved the
14 identification?

15 THE WITNESS: I'm sure there is but at that time we
16 just saw the following one.

17 THE COURT: So you saw one?

18 THE WITNESS: One, and the second one which was not
19 recorded. The very first one was not seen.

20 THE COURT: Or recorded?

21 THE WITNESS: Or recorded. The second one, the
22 number was seen but not recorded. The third one, the number
23 was seen and recorded. The fourth one, the number was seen
24 and recorded.

25 THE COURT: Okay.

1 What is on this CD is the two that were recorded, is
2 that correct?

3 THE WITNESS: The last two that were recorded, yes,
4 your Honor.

5 THE COURT: Go ahead.

6 MR. KAZEMI: And the parties have stipulated
7 pursuant to Exhibit 26 that Exhibit 9 and 10 which are the two
8 transcripts bear accurate translations of the Spanish
9 conversation to English. And at this time I'd like to play
10 the call recorded on July 31 at 1:26 p.m. and the transcript
11 of that call is Government's Exhibit 9 which the jurors have
12 in front of them.

13 THE COURT: So you can take a look at the transcript
14 that you have before you and when you have it before you as to
15 that, we'll listen to what is on the disc.

16 Okay, go ahead.

17 (Whereupon, the audiotape was played.)

18 Q Agent Aceves, can you please tell us how you came to
19 record that first phone call?

20 A That phone call was recorded after we saw that the number
21 was calling again. As I explained earlier, it was the second
22 call that we saw that phone number. And this first call, we
23 saw this phone number again and we asked to have it recorded
24 and monitored because I did listen to it as it was being
25 recorded. I stood next to the defendant and put my head next

1 to hers and listened to the phone call so I could hear both
2 sides as it was happening.

3 Q Did you hear a beeping sound during the call?

4 A Yes, the beeping sound you can hear is the call waiting
5 because at the exact same time she is calling him, he is
6 calling her again.

7 Q Can we play that call one more time?

8 THE COURT: The static I take it was static that you
9 could hear, you could hear on the phone?

10 THE WITNESS: I don't know if that is the wrestling
11 of the phone against the ear or if that's --

12 THE COURT: But it was something you could hear?

13 THE WITNESS: The actual phone call was much
14 clearer. I think that is static from the phone being held
15 against the earpiece, your Honor.

16 THE COURT: Go ahead.

17 (Whereupon, the audio tape was played.)

18 Q Agent Aceves, during this call, where were you standing?

19 A Directly next to the defendant.

20 Q Who was the speaker listed on the transcript as
21 unidentified female one?

22 A The defendant.

23 Q How do you know that?

24 A Because I was there and I listened to the phone call when
25 it was recorded.

1 Q Who was the speaker listed as unidentified male two?

2 A We believe that that would be Pintor, the person
3 arranging to meet with the defendant to retrieve the
4 1200 grams of --

5 MS. HARRIS: Objection, your Honor.

6 THE COURT: Well, whoever was calling on the phone
7 was the person you listed as an unidentified male, is that
8 right?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: Okay.

11 Q So unidentified male two is the incoming caller?

12 A Yes.

13 Q Who was that unidentified male one or unidentified male?

14 A The unidentified male, that would be me.

15 Q So after the call was terminated, that is you speaking
16 with the defendant?

17 A Yes.

18 Q When did that happen after that first call was recorded?

19 A Two minutes later, approximately.

20 THE COURT: Wait a minute. What did you say? What
21 are the words that you used? What are the words that you
22 spoke which were recorded?

23 THE WITNESS: It says yes, because I don't recall
24 exactly what the rest of that sentence was. I wanted to know
25 what had just taken place and why she.

1 THE COURT: Don't tell us why you said whatever you
2 said. So you said si, porque and, in Spanish?

3 THE WITNESS: Yes, and it was in response to
4 something she says prior to that where they have the
5 unidentified.

6 THE COURT: Statement?

7 THE WITNESS: Correct. She says something, then I
8 respond yes, but I don't recall what the rest of I was. I
9 don't recall exactly what she said there either.

10 THE COURT: Go ahead, counsel.

11 Q What is it that unidentified male two is saying on this
12 call?

13 A The defendant's name said Norby.

14 Q How does the defendant respond?

15 A She says no, no, you have the wrong number.

16 Q After this call, you said another call was placed?

17 A Yes, approximately two minutes later the same caller
18 again as identified by the caller ID, the same number calls in
19 to the defendant again and we recorded that phone call as
20 well.

21 Q Where were you standing during the second phone call?

22 A Again, right next to the defendant so I could hear
23 exactly what was being said by the caller and by the defendant
24 at the same time.

25 Q And the defendant agreed to have the call recorded again?

1 A Yes.

2 MR. KAZEMI: At this time I'd like the play for the
3 jury the second recorded phone call.

4 THE COURT: Okay.

5 MR. KAZEMI: And the jurors have the transcripts.

6 THE COURT: Okay.

7 (Whereupon, the audio tape was played.)

8 Q In this call, who is unidentified female?

9 A The defendant.

10 Q How do you know that?

11 A Again, I was standing right there when it was recorded.

12 Q Who is unidentified female two?

13 A Unidentified female two, that is the defendant as well.

14 Q How do you know that?

15 A Again, because I was right there.

16 Q And unidentified male?

17 A That is me.

18 Q Did you also listen directly to this call?

19 A Yes.

20 Q During this call, you had mentioned there was a problem
21 with the recording device?

22 A Correct. This time when we didn't expect another call so
23 quickly after the defendant had said she wasn't the defendant.
24 So when we put the earpiece back into the defendant's ear, it
25 was unintentionally put in backwards. If you put the earpiece

1 one way, it records both sides of the conversation. If you
2 put it in the other side, it just records one side. And it
3 only recorded one side of this conversation. That's why you
4 don't hear who she is speaking with. You can hear very
5 faintly in the background but it's difficult to make out.

6 Q Did you personally hear the individual on the other end
7 of the line?

8 A Yes.

9 Q What did you hear him say?

10 MS. HARRIS: Objection.

11 MR. KAZEMI: Conspirator statement, your Honor.

12 THE COURT: Counsel, if you want to argue some
13 evidentiary points, you do it up here at the sidebar not by
14 making statements of that sort in the presence of the jury.

15 I'll instruct the jury to disregard the comment.

16 Come on up to the sidebar if there is some argument
17 you want to make.

18

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1 (Whereupon, the following took place at the
2 sidebar.)

3 THE COURT: Don't do that sort of thing. That is
4 totally confusing and misleading.

5 All right, you're arguing that, and I think at this
6 point it's an evidentiary matter, further that the person
7 speaking at the other end was a member of the conspiracy to
8 import this?

9 MR. KAZEMI: Yes, your Honor, and also --

10 THE COURT: All right, hold on just a second. We
11 don't even have his statements.

12 I see. This agent is going to tell us what he said.

13 MR. KAZEMI: Your Honor, his statement will also
14 give context to the defendant's response.

15 THE COURT: What is the witness going to testify he
16 heard said?

17 MR. KAZEMI: The speaker says I'm calling on behalf
18 of El Tio, which is the code that was to be used to indicate
19 the transaction should proceed.

20 THE COURT: I'll overrule the objection and permit
21 the witness to testify but not for its truth, simply for the
22 fact that something once again matched up to other
23 information.

24 (End of discussion at sidebar.)

25

1 THE COURT: All right, the objection is overruled.

2 I'm going to receive this account of what the other
3 person said on the phone not for its truth but simply for the
4 fact that the statement was made.

5 All right, go ahead.

6 DIRECT EXAMINATION (Continued)

7 BY MR. KAZEMI:

8 Q Agent Aceves, what did you hear the individual on the
9 other end of the line say at that time?

10 A I heard the individual on the other end of the line,
11 other side of the phone call say that he was calling on behalf
12 of El Tio. Then you hear her say that she doesn't know
13 anything about El Tio.

14 Q Did you recognize that information from any other
15 information you received?

16 A Yes, that was the code I had been told earlier in the
17 day.

18 THE COURT: That was the same name that you had been
19 told.

20 THE WITNESS: Yes, that was the same code, that they
21 would be calling on behalf of El Tio.

22 Q What was that code?

23 THE COURT: Who knows that that is a code? That is
24 something you can argue to the jury, but in any event, you
25 heard this word.

1 What is the word in Spanish?

2 THE WITNESS: El Tio? T-I-O.

3 THE COURT: Is that a name or word?

4 THE WITNESS: It means uncle.

5 THE COURT: All right, go ahead.

6 MR. KAZEMI: Can we just play the audio one more
7 time.

8 THE COURT: Sure.

9 (Whereupon, the audio tape was played.)

10 DIRECT EXAMINATION (Continued)

11 BY MR. KAZEMI:

12 Q You were standing next to defendant when she responded in
13 that fashion?

14 A Yes.

15 THE COURT: Okay, ladies and gentlemen, just put
16 these transcripts down and we will go on.

17 What is next?

18 MR. KAZEMI: Thank you, your Honor.

19 Q Did the defendant receive any other calls while you were
20 in the Metro Motel room with her?

21 A Yes, there was a call to the hard line. That is the
22 motel room, that motel room telephone.

23 Q What happened during this call?

24 A I answered the phone. The person on the other line asked
25 for --

1 MS. HARRIS: Objection.

2 THE COURT: Did you record this or not?

3 THE WITNESS: No.

4 THE COURT: You did not?

5 THE WITNESS: No.

6 THE COURT: So you just listened to it?

7 THE WITNESS: And I spoke to the caller.

8 THE COURT: Okay, I'll overrule the objection but
9 once again permit these statements which are obviously unsworn
10 statements not subject to cross-examination.

11 I'll receive them not as though the speaker was
12 telling the truth but simply for the fact that these were the
13 words he used.

14 Tell us what he said, what words he used?

15 THE WITNESS: The caller asked for Norby. I told
16 the caller that she was unavailable and that was the end of
17 the call.

18 Q Did you recognize the voice on the motel room phone?

19 A Yes.

20 Q What did you recognize the voice as?

21 A The same voice that I heard on the two previous calls
22 that were recorded.

23 Q Did the defendant receive any additional calls at that
24 time?

25 A No.

1 Q Did there come a time that you resumed searching the
2 defendant's bags?

3 A Yes, after the phone calls took place, I resumed
4 searching one of the defendant's suitcases. I placed it on
5 the bed and was going through the things that were in there.
6 There was another agent, David Samilo, next to me with another
7 suitcase and he was going through the items in that suitcase.

8 THE COURT: Keep your voice up.

9 THE WITNESS: Yes, your Honor.

10 Q I'm showing you what has been marked for identification
11 as Government's Exhibit 12.

12 Do you recognize this item?

13 A Yes, that is one of the suitcases that was in the
14 defendant's possession.

15 THE COURT: That was one of the suitcases you
16 searched?

17 THE WITNESS: Yes, your Honor.

18 MR. KAZEMI: May I approach, your Honor?

19 Q Please examine the item, agent.

20 A Yes.

21 Q Is this item in substantially the same condition it was
22 in when it was recovered from the defendant?

23 A Aside from the tape and the evidence stickers, it had a
24 baggage tag on I believe which was in evidence but that is it.

25 MR. KAZEMI: Your Honor, may I open Exhibit 12?

1 THE COURT: Are you going to offer it and its
2 contents?

3 MR. KAZEMI: I am.

4 THE COURT: Any objection? If not, I'll mark the
5 exhibit.

6 Exhibit 12 is received in evidence and so marked.

7 (So marked in evidence as Government's Exhibit 12.)

8 Q Agent Aceves, will you take a moment to look through the
9 belongings in Exhibit 12.

10 A Those are the defendant's belongings.

11 Q Is that substantially in the same condition, the inside
12 of Exhibit 12, as it was at the time it was recovered from the
13 defendant?

14 A It was a little neater, but yes.

15 Q Agent Aceves, what happened when Exhibit 12 was searched?

16 A Agent Samilo was searching that bag and found a metal
17 perfume canister. He pulled it out, looked at it and took the
18 cap off. He sprayed it. It was indeed perfume. He put the
19 cap back on and showed it to me. I handled it. I didn't
20 think much of it. I put it down on the bed because it had
21 perfume in it. It looked like a perfume canister that a woman
22 would buy in a store. I think it had a name brand on it that
23 I don't recall at the time. Then we continued searching. I
24 continued searching the other suitcase. He continued
25 searching this suitcase. He pulled out a second canister

1 different color but same looking canister. Then he pulled out
2 a third canister the same, again, a different color. Then he
3 pulled out a fourth canister. This seemed a little odd, these
4 big perfume canisters. By the time he had the fourth one, we
5 looked at it again, shaking them around. He handed it to me.
6 They appeared to be full because they were heavy, however,
7 when you have a liquid, you shake it, it kind of sloshes
8 around. There was no slosh to this. Whatever was inside was
9 solid. I again took the can and sprayed it. It was indeed
10 perfume. At this time the defendant stated that the canisters
11 were not --

12 MS. HARRIS: Objection.

13 THE COURT: I'll permit it.

14 Go ahead.

15 A At this time the defendant stated that the cannisters
16 were not hers, which led me -- yes?

17 Q Did the defendant see Agent Samilo remove the canisters?

18 A Yes.

19 Q How do you know that?

20 A The defendant was sitting right next -- the room is not
21 large enough for her to be in a concealed area. She was
22 sitting right next to us. As we went through her belongings,
23 we did it right in front of her.

24 Q At what point did the defendant state that the canisters
25 were not hers?

1 A By the time, we were at the fourth one and showing much
2 more interest in the suspiciousness of these canisters.

3 Q Did the defendant's denial regarding her ownership of the
4 canisters increase your suspicion about them?

5 MS. HARRIS: Objection.

6 THE COURT: Sustained.

7 Q Based on your experience as a DEA agent.

8 MS. HARRIS: Objection.

9 THE COURT: Is this going to be the same question?

10 MR. KAZEMI: It will be a similar question,
11 your Honor.

12 THE COURT: No. That is a matter of argument and we
13 don't base it on suspicions.

14 Q Agent Aceves, I'm showing you what has been marked for
15 identification as Government's Exhibit 11 A.

16 Do you recognize the photograph?

17 A Yes.

18 Q What is that photograph of?

19 A These are the four perfume canisters that were found in
20 the defendant's suitcase. The lid of the one on the bottom
21 left-hand corner was the one that I was able to open up and
22 find the heroin in initially.

23 Q With the exception of the canister at the bottom left of
24 the photograph, is that how the canisters appeared at the time
25 when Agent Samilo removed them from the defendant's luggage?

1 A Yes. There is also a black one on the far left that says
2 Perry Ellis. At the top it's a little damaged. That also was
3 us trying to open the canisters up but the way they were
4 found, they were perfect, no dents, no scratches, no seams,
5 nothing.

6 MR. KAZEMI: Your Honor, I have a series of
7 photographs of the canisters.

8 Can I bring them to the Court?

9 THE COURT: Yes. If there is no objection, I'll
10 mark them.

11 They are received and marked as Government's
12 Exhibit 11 A, 11 B, 11 C and 11 E and 11 D.

13 (So marked in evidence as Government's Exhibit 11 A,
14 B, C, D, E.)

15 MR. KAZEMI: I move to admit Government's Exhibit 11
16 A through E into evidence.

17 THE COURT: They are received and marked already.
18 Go ahead.

19 Q Agent Aceves, again direct your attention to Government's
20 Exhibit 11 A.

21 Are those canisters similar to the way they appeared
22 when they were removed from the luggage with the exception of
23 the bottom left?

24 A Correct, the cap on the bottom left and the black Perry
25 Ellis canister. Other than that, they were in perfect

1 condition.

2 THE COURT: What, Perry Ellis?

3 THE WITNESS: I believe is says Perry Ellis at the
4 top, your Honor.

5 THE COURT: Each?

6 THE WITNESS: No, I think the others might have
7 different name brands.

8 THE COURT: Go ahead, counsel.

9 Q Now, I'm showing you what has been marked as Government's
10 Exhibit 11 B.

11 Can you please explain what that document is?

12 A That is the cap of the first perfume canister I was able
13 to open. In the very middle there is a little sliver of sort
14 of a light brownish tan colored substance that field tested
15 positive for heroin.

16 THE COURT: How did you open this?

17 THE WITNESS: I was able to pry the plastic. There
18 is a plastic cap that was within this cap which is where the
19 little spray nozzle for the perfume canister was seated in.
20 So once I pulled the plastic portion out, in the top of the
21 cap, the very, very top of the cap was a portion of heroin.

22 THE COURT: Did you use a tool, did you use a knife
23 or something?

24 THE WITNESS: I used a knife.

25 THE COURT: Okay.

1 Q Approximately how long did it take for you to pry open
2 this canister?

3 A It took me a few minutes.

4 Q I'm now showing you Exhibit 11 C.

5 Would you please explain that photograph for the
6 jury?

7 A In this photograph you can see the metal is peeled away
8 on that black canister and there is a large chunk that is
9 plastic wrapped, has some writing on it. That is a chunk of
10 heroin.

11 In the middle of the picture there is a very small
12 spray nozzle. That is the small portion of actual perfume
13 that was in the canisters. So if they were tested at any
14 point to see if they were real, they would spray perfume.

15 Then the rest, the scraps are the metal from the
16 canister. There is the caps laying next to them. You can see
17 the caps have a little hole in them where the spray nozzle
18 would just go into.

19 Then the other canisters are still there.

20 Q This is 11 E?

21 A Again, here the metal is peeled away so you can see more
22 of a cross-section or better view of the heroin and how it was
23 concealed inside and how essentially the containers were
24 completely full of heroin with just a small amount of perfume
25 and a very small amount of wasted space.

1 THE COURT: The numbers at the bottom of this
2 photograph are what?

3 THE WITNESS: I believe those are inches, your Honor
4 but I'm not sure.

5 THE COURT: Some sort of scale?

6 THE WITNESS: Yes.

7 THE COURT: To indicate the size?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: Go ahead.

10 Q Finally, 11E.

11 A That is one of the portions from the body of the
12 canister. That is all heroin and then it's just next to a
13 Leatherman tool for scale.

14 THE COURT: Leatherman is a brand of knife, is that
15 right?

16 THE WITNESS: Yes, your Honor.

17 THE COURT: Okay.

18 Q And where was that chunk removed from?

19 A The inside of one of the canisters.

20 THE COURT: In that photograph, I take it they are
21 both in somebody's hand?

22 THE WITNESS: Yes, that photo was in the hand of one
23 of the agents.

24 Q I'm now going to show you what has been marked for
25 identification as Government's Exhibit 13.

1 THE WITNESS: Excuse me, may I step down to open the
2 exhibit?

3 THE COURT: Yes.

4 Is this something that you have seen before?

5 THE WITNESS: Yes, that is the box that I placed the
6 exhibit into when I submitted it to the lab for analysis.

7 THE COURT: Go ahead if you want to open it up. And
8 we'll see if there are any objections.

9 THE WITNESS: For the record, I will state that I
10 opened the brown box, the exhibit.

11 Q Would you please show the jury what was contained inside
12 the box?

13 THE WITNESS: May I get a little closer?

14 THE COURT: Yes.

15 MS. HARRIS: May we approach briefly?

16 THE COURT: What are you going to do? You are going
17 to take something out of the box?

18 THE WITNESS: Would you like to see, your Honor?

19 THE COURT: No. Are you going to take exhibits from
20 the box separately marked?

21 I'm asking the lawyer.

22 MR. KAZEMI: Your Honor, Exhibit 13 is the heroin.

23 THE COURT: All right, come on up.
24
25

1 (Whereupon, the following took place at the
2 sidebar.)

3 THE COURT: When you talk about the exhibits, talk
4 about them by number not describing them.

5 MS. HARRIS: The only issue is I've never seen the
6 packaging and what labels. They put a lot of labels on the
7 evidence, the DEA, and I don't want the labels going back to
8 the jury.

9 THE COURT: Let's take a brief recess. Maybe we can
10 get this court reporting back on line and you can look at the
11 exhibits.

12 (End of discussion at sidebar.)

13 THE COURT: Ladies and gentlemen, we are going to
14 take a brief recess.

15 Don't talk about the case or permit it to be
16 discussed with you. We'll start again shortly. You may
17 retire.

18 Just leave the transcripts behind.

19 (Jury out at 2:25 p.m.)

20 THE COURT: I think probably, and this is not a
21 rabbit out of the hat situation, maybe you can just take
22 things out and put them on the table and the witness can step
23 down and identify each exhibit.

24 We'll start again shortly.

25 (Recess.)

1 THE COURT: Please have a seat. All right. Are we
2 ready to go?

3 MR. NATHANSON: Yes, your Honor.

4 MS. HARRIS: Yes, your Honor.

5 THE COURT: We got the exhibits all out of the box?

6 MR. KAZEMI: Yes, your Honor. We relabeled them
7 13A, B, C and D just for ease of understanding for the jury.

8 THE COURT: If there's no objection, can we mark
9 them now?

10 MS. HARRIS: That's fine, your Honor.

11 THE COURT: Teresa, you can go and mark them.
12 Why don't you go get the jury?

13 COURTROOM DEPUTY: You want me to mark them before I
14 bring the jury out?

15 THE COURT: No. No.

16 (Brief pause.)

17 (The jury enters the courtroom.)

18 THE COURT: All right. In the interim we've taken
19 the materials outside the box.

20 Ms. Henry, would you mark the exhibits that both
21 sides are not objecting to in evidence and read into the
22 record the number that's been placed on the exhibit?

23 THE INTERPRETER: I'm sorry, your Honor. I'm having
24 some trouble with the equipment.

25 THE COURT: Oh, everything is breaking down today.

1 Why don't you put yourself in a position so you can sit next
2 to the defendant?

3 THE INTERPRETER: Okay.

4 (Brief pause.)

5 THE COURT: You've marked them?

6 COURTROOM DEPUTY: Yes, they are marked.

7 THE COURT: You have to say it on the record so we
8 have a record of what's been marked and received.

9 COURTROOM DEPUTY: Government's Exhibit 13A marked
10 in evidence.

11 Government's Exhibit 13B marked in evidence.

12 Government's Exhibit 13C marked in evidence.

13 And Government's Exhibit 13D marked in evidence.

14 THE COURT: All right. Let's go ahead.

15 Do you want to stand or stay where you are?

16 THE WITNESS: I think it might be easier, your
17 Honor, if I stand.

18 BY MR. KAZEMI:

19 Q Explain to the jury the four exhibits that have been
20 marked.

21 A. Exhibit 13A --

22 THE COURT: Maybe you can hold it up so people can
23 see what you're referring to. You don't have to bring it over
24 there, just where everybody in the courtroom can see it.

25 THE WITNESS: These are the metal shards that were

1 the containers, the shell of the containers.

2 THE COURT: This is what's left after you opened
3 them up and removed the contents?

4 THE WITNESS: Correct. These were the outer shells
5 of the containers, of the perfume canisters.

6 These are the wrappings.

7 MR. NATHANSON: What are the exhibit numbers?

8 THE WITNESS: 13B. These are the wrappings that the
9 heroin was in inside the metal canisters. You can see some of
10 these are --

11 THE COURT: Actually, you might just lay that on the
12 evidence presentation under the camera on the podium; and that
13 will permit jurors to see a little bit more clearly what
14 you're referring to.

15 THE WITNESS: I've tilted it so you can see some of
16 them are tubes almost as if they were an empty roll of a paper
17 towel or --

18 THE COURT: Now we've lost everything.

19 Hold on a second. All right. This is not working
20 either. All right.

21 Go ahead. Continue the way --

22 COURTROOM DEPUTY: There it is.

23 THE COURT: Oh, you've got it back.

24 THE WITNESS: Okay. As you see, I tilted it so you
25 can look down into the tubes. Those were just the linings

1 that were inside the metal shards.

2 THE COURT: All right. Can you turn it on its side
3 so we can see it from that angle?

4 THE WITNESS: Yes. It appears to be some sort of
5 plastic container.

6 THE COURT: All right. And you want to turn it over
7 to the other side, too?

8 THE WITNESS: (Complies.)

9 THE COURT: What are we looking at here?

10 THE WITNESS: These are just the wrappings from the
11 containers.

12 THE COURT: Okay.

13 THE WITNESS: These were sort of sealed so the
14 heroin cannot be got from within.

15 THE COURT: All right. Go ahead. What's next?

16 THE WITNESS: Next one is 13C.

17 THE COURT: Ladies and gentlemen, you'll have an
18 opportunity to have all the evidence in your hands during your
19 deliberations. So, this is just so you can follow the
20 testimony as it comes in. All right.

21 Go ahead.

22 THE WITNESS: These are caps. You're going to see
23 little caps with holes. That's where the lid for actually the
24 sprayer for the perfume would go over the top of that to cover
25 it.

1 THE COURT: Can that be displayed through the
2 projection or not?

3 THE WITNESS: In here as well are actual small
4 perfume samples.

5 THE COURT: You want to point where the spray is, if
6 you can see it?

7 THE WITNESS: Yes. Inside here you can see --

8 THE COURT: Aluminum.

9 THE WITNESS: -- this is the top of the sprayer
10 (points). This is the liquid inside this glass tube. This is
11 where the perfume was. Only this small sample was perfume.
12 The rest of the canister was heroin.

13 Here these are the lids for the canisters. You'll
14 see one here. This lid's over the top of the sprayer
15 (points).

16 THE COURT: All right.

17 THE WITNESS: Last but not least is 13D, and this is
18 the 1200 grams of heroin.

19 THE COURT: All right. You want to put that on the
20 camera, too? Be easier to see that.

21 THE WITNESS: (Complies.)

22 THE COURT: That writing, I take it, you placed on
23 that after it was seized?

24 THE WITNESS: No, your Honor. This is from the lab.

25 THE COURT: The laboratory that analyzed it? Okay.

1 THE WITNESS: Yes. These are markings from the
2 chemist.

3 THE COURT: You want to turn it over just so we can
4 see it from another perspective?

5 THE WITNESS: Again, these markings in the inside
6 are from the chemist.

7 THE COURT: Okay. All right. Thanks.

8 THE WITNESS: (Resumes stand.)

9 THE COURT: Okay. Go ahead, counsel.

10 BY MR. KAZEMI:

11 Q Now, Agent Aceves, I've posted Government's Exhibit 11A.
12 That's how the exhibits you just explained to the jury were
13 originally packaged?

14 A. Yes. Again, except for the slight damage on the one on
15 the left and the damage to the lid that I did trying to open
16 the lid.

17 Q. What did you do after the heroin was discovered in the
18 canisters?

19 A. Placed the defendant under arrest, gathered her
20 belongings, and transported her for processing.

21 Q. What is the DEA's protocol for dealing with a defendant's
22 belongings after arrest?

23 A. We take them with us and inventory them.

24 Q. Can you please describe this inventory process?

25 A. You have to go through the belongings and sift through

1 them and make sure there's nothing in there that isn't drugs
2 as well. Make sure there's nothing in there that's
3 dangerous -- weapons, guns, knives, explosives.

4 Then we put drug evidence such as that into our drug
5 vault. It goes through to the lab. They analyze it.

6 These items, nondrug items, personal items go
7 into -- I'm sorry. The nondrug items go into the nondrug
8 evidence vault and are stored there for safekeeping.

9 Q. Did you personally perform the inventory of the
10 defendant's belongings in this case?

11 A. Yes.

12 Q. How long did that take you?

13 A. Several hours.

14 Q. And while creating this inventory, did you personally
15 examine each item?

16 A. Yes.

17 Q. I'm showing you what's been marked for identification as
18 Government's Exhibit 22. What is this item?

19 A. This is a page in the defendant's address book or an
20 address book that was found on the defendant.

21 Q Is this a photocopy of that page?

22 A Yes. It's a photocopy of a page of an address book that
23 was in the defendant's possession.

24 Q. Is it a fair and accurate copy of that address as it
25 appeared in the defendant's address book?

1 A. Yes.

2 MR. KAZEMI: Your Honor, I'd move to admit Exhibit
3 22 into evidence.

4 MS. HARRIS: Objection.

5 THE COURT: Sorry?

6 MS. HARRIS: Objection.

7 THE COURT: Come on up. Bring the item and come up
8 to the sidebar. Tell me what the objection is.

9 (Discussion at sidebar; continued on the next page.)

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THE COURT: What's the objection?

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MS. HARRIS: I'm not sure what the relevance is,
your Honor.

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MR. KAZEMI: In 2007 when the defendant entered the
United States, she falsely declared on her customs form she
was going to this address. Instead, she went to the Metro
Motel. The relevance is it shows absence of mistake. She did
the same thing in 2008. She falsely placed an address on her
customs declaration form and went to the Metro Motel. In 2008
it was a different address but the same pattern.

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THE COURT: Did you ask for disclosure of other
misconduct?

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MS. HARRIS: I did. I made a full discovery letter.

THE COURT: I'll exclude this because I don't
remember you made any offer that you were going to offer
evidence of other misconduct by the defendant.

Let's go ahead.

(Discussion at sidebar concludes; held in open
court.)

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3 THE COURT: All right. The objection's sustained.
4 What's next?

5 BY MR. KAZEMI:

6 Q I'm now showing you what's been marked for identification
7 as Government Exhibit 17, 18A, 18B, and 19.

8 Please review those documents.

9 A. (Reviews documents.) Seventeen?

10 Q. Yes.

11 A. This is --

12 MS. HARRIS: May we approach again, please?

13 THE COURT: Sorry?

14 MS. HARRIS: May we approach again, please?

15 THE COURT: If you want to come up here and look at
16 what the witness is looking at, you can.

17 MS. HARRIS: Before he describes the document, I
18 wanted to approach.

19 THE COURT: Well, come on up and take a look at
20 what's being looked at, if you want.

21 Do you recognize those as something you've seen
22 before or not?

23 THE WITNESS: Yes.

24 THE COURT: And you have an objection to the witness
25 describing what he recognizes these to be?

1 MS. HARRIS: I do, your Honor.

2 THE COURT: All right. Bring the documents over.

3 Come up to the sidebar, although I want to say to the
4 attorneys that this is the kind of thing that ought to be
5 taken up not while the jury is in the box but during the
6 recesses so that we don't keep the jurors waiting, resolving
7 these matters that should have been resolved before they came
8 out.

9 (Discussion at sidebar; continued on the next page.)

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THE COURT: Let me see the documents, please. Let's hurry up. This is really an awkward way to proceed.

6

What's the objection?

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MS. HARRIS: Your Honor, again, they're trying to put in hotel records from 2007. I understood they were --

9

MR. KAZEMI: 2008, your Honor. It's also a business card that shows the address for the Metro Motel.

11

THE COURT: That I'll admit. That's Exhibit 19.

12

(Government Exhibit 19 received in evidence.)

13

THE COURT: What else?

14

MR. KAZEMI: A receipt from the Metro Motel. It shows the defendant checked in.

16

MS. HARRIS: We obviously consent to that, but there's also 2007 records.

18

MR. KAZEMI: 2008 is right here.

19

THE COURT: All right. I'll mark in evidence -- could you take these out so I can mark the exhibit number?

21

MR. KAZEMI: Sure.

22

(Government Exhibit 17 received in evidence.)

23

THE COURT: All right. Well, 18A, B I'll sustain the objection there; but I'll permit inquiry perhaps on cross-examination of the defendant when she testifies. All

25

1 right.

2 Let's go ahead.

3 MR. KAZEMI: Your Honor, I'd just like to note for
4 18A and B, the significance of these documents is that she
5 knew where she was going when she came back to the United
6 States. She had previously stayed here before.

7 THE COURT: Let's go.

8 MR. KAZEMI: Same hotel.

9 (Discussion at sidebar conclude; held in open
10 court.)

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5 BY MR. KAZEMI:

6 Q Agent Aceves, what is Exhibit 17?

7 A. Exhibit 17 is a hotel receipt that was found on the
8 defendant. It's a hotel receipt marked July 31st, 2008, Room
9 166, \$95; and it's time stamped at 7:02 a.m. and has the
10 defendant's signature on it.

11 Q. Do you know what hotel that receipt is from?

12 A. The Metro Motel.

13 Q. And how do you know that?

14 A. I went -- well, after it was found on the defendant, we
15 confirmed with the Metro Motel that this is a copy of their
16 receipt.

17 Q. And what is Exhibit 19?

18 THE COURT: What's the date of that? I'm sorry.

19 THE WITNESS: Your Honor, it's July 31st. The time
20 is 7:02 a.m.

21 THE COURT: Yes, sir.

22 BY MR. KAZEMI:

23 Q What is Exhibit 19?

24 A. Exhibit 19 is a -- looks to be a business card from the
25 Metro Motel. It also was found on the defendant.

1 Q. You said on Exhibit 17 that the receipt was time stamped
2 7:02 a.m.

3 A. Correct.

4 Q. And do you recall when the defendant arrived at JFK
5 Airport?

6 A. I have to look at the documents to be certain of the
7 exact time.

8 THE COURT: You weren't there when the defendant
9 arrived.

10 THE WITNESS: No, your Honor.

11 THE COURT: All right. What's next?

12 BY MR. KAZEMI:

13 Q Were these documents recovered from the defendant?

14 A. Yes.

15 MR. KAZEMI: Your Honor, I'd move to admit 17 and 19
16 into evidence.

17 THE COURT: I believe I've already marked them in
18 evidence.

19 MR. KAZEMI: Thank you, your Honor.

20 BY MR. KAZEMI:

21 Q The defendant have a key for 166 of the Metro Motel when
22 she was arrested?

23 A. Yes.

24 Q. And was any money recovered from the defendant?

25 A. Yes.

1 Q. Do you recall approximately how much money the defendant
2 was carrying at the time of her arrest?

3 A. It's in the inventory report that I wrote but in one
4 wallet there was \$600 and in another wallet there were a few
5 dollars. She had some Columbian pesos as well in a change
6 purse and some bills totaling in US currency maybe around \$650
7 total, but that's just a rough estimate since I don't know the
8 exact exchanges with the Columbian pesos and whatnot.

9 Q. I now show you what's been marked for identification as
10 Government Exhibit 15B.

11 Do you recognize that document?

12 A. I'm sorry. 15B?

13 Q. B.

14 A. 15B is a prayer that was found on the defendant.

15 THE COURT: A what?

16 THE WITNESS: A prayer. It's a Prison Warden's
17 Prayer.

18 BY MR. KAZEMI:

19 Q And do you recognize Government's Exhibit 15A?

20 A. Yes. This is a translation of the Prison Warden's
21 Prayer.

22 MR. KAZEMI: And, your Honor, the parties have
23 agreed pursuant to stipulation that it is a fair and accurate
24 translation of the prayer from Spanish to English.

25 I'd like to move Exhibit 15A into evidence.

1 THE COURT: All right. No objection, that will be
2 received and marked.

3 (Government Exhibits 15A and 15B received in
4 evidence.)

5 THE WITNESS: 15A or B? Here's A, your Honor.

6 MR. KAZEMI: A and B.

7 THE WITNESS: A and this is B, your Honor.

8 THE COURT: All right.

9 THE WITNESS: Thank you, sir.

10 THE COURT: They're received and marked.

11 What's next?

12 MR. KAZEMI: Your Honor, I'd like to provide to the
13 jury a copy of the translation of 15A.

14 THE COURT: That's what we have the projector for.

15 MR. KAZEMI: Okay. I'm posting for the jury Exhibit
16 15A.

17 BY MR. KAZEMI:

18 Q Agent Aceves, can you please read that document?

19 THE COURT: What's that? Can you get the image back
20 on the screen, please? All right.

21 THE WITNESS: There it is.

22 THE COURT: Okay. Do you want to read that off so
23 people can follow it or not?

24 THE WITNESS: As you wish, your Honor.

25 MR. KAZEMI: Yes.

1 THE COURT: Go ahead.

2 THE WITNESS: Prison Warden's Prayer.

3 "My sweetest Jesus, for the sake of your beloved
4 mother and your sacred passion, deliver me in this instance
5 from enemies and rivals. Wherever I go, may I walk without
6 fear. I fear no one. I walk with your mother the Queen of
7 Heaven and Earth.

8 Protect me, Mother, defend me like a son should I
9 perchance be guilty with justice ready to set upon me, may it
10 cower, may it lose its brawn and valor.

11 Doors and windows, chains, bars, and shackles, keys
12 stocks, and handcuffs, all unfasten that I (name of person)
13 may leave exclaiming: Jesus, Jesus, Jesus, be my aid on this
14 occasion, Amen.

15 Say this extremely powerful prayer with great faith,
16 and its effects shall be soon be seen."

17 THE COURT: Okay.

18 BY MR. KAZEMI:

19 Q And that document was found on the defendant at the time
20 of her arrest?

21 A. Yes.

22 Q. And now I'd like to show you Government's Exhibit 5.

23 Do you recognize that document?

24 A. Yes. This is a receipt that was found on the defendant.

25 It's for --

1 THE COURT: Well, don't get into the contents of it.

2 Are you offering it?

3 MR. KAZEMI: Yes, your Honor.

4 THE COURT: All right. If you'll bring it up and
5 there's no objection, I'll mark it.

6 MS. HARRIS: No objection.

7 THE COURT: Received in evidence and so marked.

8 (Government Exhibit 5 received in evidence.)

9 THE WITNESS: Thank you, sir.

10 BY MR. KAZEMI:

11 Q Do you recognize that item?

12 A. Yes.

13 Q. What is it?

14 A. It is a receipt for \$25 worth of T-Mobile minutes for a
15 prepaid cell phone.

16 Q. And what's the date of that receipt?

17 A. It is time stamped 7-31-2008, 11:14:53.

18 Q. And where is the store the receipt came from?

19 A. It is 8601 Roosevelt Avenue. It's Jackson Heights, New
20 York.

21 Q. Approximately how far from the Metro Motel is that store?

22 A. It's not that far. I would say maybe between a mile and
23 a half and two miles, tops.

24 Q. And how do you know this?

25 A. 'Cause I went from the hotel to the store.

1 Q. I'd now like to show you Government's Exhibit 16 for
2 identification.

3 A. Thank you.

4 Q. Do you recognize those items?

5 A. Yes.

6 Q. What are those items?

7 A. These are SIM cards or subscriber identity module cards
8 and each one of these is -- essentially, there's three of
9 them. Each one of them is essentially a different phone
10 number that's assigned to each one. So, if a person has a
11 cell phone, they can switch out different phone numbers using
12 just one cell phone.

13 So, these were also found on the defendant. So,
14 between this and the cell phone, the defendant had four phone
15 numbers.

16 MR. KAZEMI: Government moves to admit Exhibit 16
17 into evidence, your Honor.

18 THE COURT: All right. If there's no objection,
19 I'll receive and mark this in evidence as Exhibit 16.

20 (Government Exhibit 16 received in evidence.)

21 THE WITNESS: Thank you, sir.

22 BY MR. KAZEMI:

23 Q After the defendant was arrested, did you continue your
24 investigation?

25 A. Yes.

1 Q. Did there come a time when you subpoenaed the phone
2 records for the defendant?

3 A. Yes.

4 Q. And was this a subpoena for the phone that was found in
5 defendant's possession?

6 A. Yes.

7 Q. And that was the phone that was admitted as Exhibit 3?

8 A. Yes.

9 Q. When was the first time that you subpoenaed the records
10 for that phone?

11 A. I believe it was August 12th. I don't remember exactly,
12 but I believe that's what date it was.

13 Q. I'll show you what's been marked for identification as
14 Government's Exhibit 4.

15 Do you recognize these documents?

16 A. Exhibit 4? Exhibit 4, yes.

17 Q. And what are they?

18 A. These are phone records for the cell phone that was found
19 on the defendant on July 31st.

20 MR. KAZEMI: And, your Honor, pursuant to the
21 stipulation, the parties have agreed to offer these phone
22 records into evidence.

23 THE COURT: All right. I'll receive and mark
24 Exhibit 4 in evidence.

25 (Government Exhibit 4 received in evidence.)

1 BY MR. KAZEMI:

2 Q Showing you page 1 of Exhibit 4, what is the name listed
3 as a subscriber for this phone?

4 A. The name listed is Consuelo --

5 THE COURT: Wait a minute. Hold still. Okay. Got
6 it.

7 Go ahead.

8 THE WITNESS: The name --

9 BY MR. KAZEMI:

10 Q What's the name list?

11 A. The name listed is Consuelo Gomez.

12 Q. And this was the phone found in the defendant's
13 possession?

14 A. Correct.

15 Q. Is there a address or second area phone number listed --

16 THE COURT: Do you know what the "none" means
17 between the Consuelo --

18 THE WITNESS: No middle name, I believe, your Honor.
19 No middle name was given at the time.

20 THE COURT: Okay. I see.

21 BY MR. KAZEMI:

22 Q Is there an address or secondary phone number listed for
23 this subscriber?

24 A. No. Just a date of birth and no address or secondary
25 phone number.

1 Q. What is the date of birth listed?

2 A. February 7th, 1957.

3 Q. Is that the defendant's date of birth?

4 A. No.

5 Q. Did you attempt to confirm if the information provided
6 for the defendant's phone -- specifically Consuelo Gomez; date
7 of birth February 7th, 1957 -- corresponded to the identity of
8 a real person?

9 A. Yes, I --

10 MS. HARRIS: Objection.

11 THE COURT: Well, I'll allow it. I'll sustain the
12 objection to the form of the question.

13 What, if anything, did you do with that name and
14 birthdate?

15 THE WITNESS: I tried to find out if there actually
16 was a Consuelo Gomez with that name and birthdate; and I could
17 not verify that there was, your Honor.

18 THE COURT: How did you do that? What steps did you
19 take?

20 THE WITNESS: I looked it up in the systems that we
21 use on a regular basis to identify, locate suspects.

22 THE COURT: Well, what? The phone book or --

23 THE WITNESS: No, we have systems online on the
24 computer.

25 THE COURT: So, you did some sort of computer search

1 and couldn't turn up that name at all?

2 THE WITNESS: Not with that date of birth, your
3 Honor.

4 THE COURT: Not with that date of birth.

5 THE WITNESS: That name did come up several times,
6 but it did not come up with a match to that date of birth.

7 THE COURT: All right. What's next?

8 BY MR. KAZEMI:

9 Q When was this phone activated?

10 A. This phone, it states it was activated on April 25th,
11 2007.

12 Q. And when was the last refill date for the phone?

13 A. The last refill date was July 31st, 2008.

14 Q. If you can please explain to the Court what that means,
15 "refill date."

16 A. It was the last time that prepaid minutes were added to
17 the phone account. The receipt we looked at before with the
18 \$25 worth of T-Mobile minutes, that was -- that would be that
19 refill.

20 Q. So, the receipt previously admitted had the same refill,
21 had the same date as the refill date for this phone?

22 A. Correct.

23 Q. And does the record indicate whether this is a prepaid
24 phone?

25 A. It does. It states that it is a prepaid phone.

1 Q. Does it contain the defendant's phone number?

2 A. Yes.

3 Q. And what's that number?

4 A. (646) 683-9762.

5 THE COURT: And that's the number associated with
6 this particular account. Is that what you're saying?

7 THE WITNESS: Correct. That's the phone number that
8 was --

9 THE COURT: Associated with this account.

10 THE WITNESS: Correct. Yes, your Honor.

11 THE COURT: If you dial that number, did or did you
12 dial that number to see if it rang on the phone you acquired?

13 THE WITNESS: I did not.

14 THE COURT: Was there any concern whether this is
15 the same number that's on the phone or not?

16 I take it not. So, let's go ahead.

17 BY MR. KAZEMI:

18 Q Have you subpoenaed the phone records for this number?

19 A. Yes, for this number, yes.

20 Q. I'd like to show you the second to last page on this
21 exhibit which has been stipulated into evidence. Can you
22 explain to the jury the information --

23 THE COURT: Is it marked in evidence?

24 MR. KAZEMI: Which has been marked into evidence.

25 THE COURT: Has been marked as exhibit what?

1 MR. KAZEMI: This, your Honor, is exhibit -- it's
2 part of Exhibit 4.

3 THE COURT: All right.

4 BY MR. KAZEMI:

5 Q Can you please explain to the jury the information
6 contained in each column of these records?

7 A. You have the phone number assigned to this account in the
8 first column on the left, the date of the call where there was
9 an incoming call or outgoing call, the time, the phone number
10 that was calling or that was called, the type of call.

11 At the bottom is a legend for the time. I see the
12 first one says "D." I think that's a text message or picture
13 and then the minutes of the duration of that call.

14 Q. Did you review these phone records for July 31st, 2008?

15 A. Yes.

16 Q. And what did you learn as a result of your review of
17 these records?

18 A. That there were on here four phone calls between the
19 defendant and the (646)427-2509 number that was calling the
20 defendant when we were in the room with the defendant and
21 those were the calls that we recorded and listened to earlier.

22 Q. So, two of those calls were the calls that were played
23 for the jury?

24 A. Yes. I believe the one that says 10:26 and 10:28, these
25 records are on Pacific time. So, it's a three-hour

1 difference. So, that would be 1:26 and 1:28.

2 THE COURT: I'm sorry. Three-hour difference
3 between what?

4 THE WITNESS: The T-Mobile call records are on
5 Pacific time. So, that 10:26 is actually 1:26, your Honor;
6 and the 10:28 is 1:28.

7 THE COURT: Okay.

8 THE WITNESS: I believe at the bottom the PDT, I
9 think it stands for Pacific time.

10 BY MR. KAZEMI:

11 Q Do these records indicate when the first call was
12 received from that caller?

13 A. 8:18 which would be 11:18.

14 Q. And do you recall when that time relates to the time when
15 the defendant purchased her prepaid minutes?

16 A. I believe on that receipt it says 11:14. So, it was
17 approximately four minutes after that.

18 Q. So, would it be accurate to say that the man who called
19 the defendant --

20 MS. HARRIS: Objection.

21 THE COURT: Don't -- I think there's going to be an
22 objection to form but go ahead. State your question.

23 BY MR. KAZEMI:

24 Q So, the (646)427-2509 number called the defendant at
25 8:18 -- at 11:18 on July 31 --

1 A. Yes.

2 Q. -- based on these records?

3 A. Yes, just four minutes approximately after the defendant
4 had just put -- refilled the minutes on her phone.

5 Q. And do these records indicate how long that phone call
6 lasted?

7 A. It states two minutes.

8 THE COURT: And when was that in relation to the
9 time that you arrived at this motel and started surveillance?

10 THE WITNESS: I started surveillance at
11 approximately noon, your Honor; and this was approximately 40
12 minutes prior to that, 40, 45 minutes prior to that.

13 THE COURT: Oh, okay.

14 Go ahead. What's next?

15 BY MR. KAZEMI:

16 Q Do you recognize the other numbers listed on the
17 defendant's phone record for July 31st, 2008?

18 A. Yes, the 8:27 which would be 11:27 would be my phone
19 number. When Special Agent Walsh called me that morning to
20 tell me the information regarding the courier that was at the
21 motel, Metro Motel on Queens Boulevard, he also gave me the
22 phone number for the courier.

23 At that time I didn't have anywhere where to write
24 it down. I punched it into my cell phone so I'd have it at a
25 later time. I punched it in and hit "send" and "end"

1 simultaneously so it wouldn't be sent but it would be recorded
2 in my phone on my "sent" calls so I could pull it up anytime.

3 This is something that I do with phone numbers often
4 when I don't have time to write it down so I can record it
5 easily.

6 THE COURT: Excuse me. Did that call end up being
7 recorded on that account?

8 THE WITNESS: Yes, it's the call that is at 8:27
9 which would be 11:27.

10 THE COURT: That's your number.

11 THE WITNESS: Yes, your Honor.

12 THE COURT: Go ahead. What's next?

13 BY MR. KAZEMI:

14 Q According to this report, what time did you input the
15 defendant's number into your phone?

16 A. At approximately 11:27.

17 Q. And how did you obtain the defendant's phone number?

18 A. It was given to me from Special Agent Richard Walsh, the
19 DEA agent in Bogota, Columbia.

20 Q. And you testified earlier that Agent Walsh was relaying
21 that information to you on a near realtime basis?

22 MS. HARRIS: Objection.

23 THE WITNESS: Yes.

24 THE COURT: I'll sustain the objection to the form
25 of the question. Don't lead the witness.

1 BY MR. KAZEMI:

2 Q How was Agent Walsh relaying that information to you?

3 A. He was relaying the information to me as he was receiving
4 the information. So, on a realtime basis he would receive the
5 update; and he would call me. I'd get the latest pertinent
6 information. Then he'd call me back with more recent
7 information and so forth. That's how it went throughout the
8 day, several calls back and forth.

9 THE COURT: This is at least what he told you, is
10 that -- you don't know this of your own personal knowledge.
11 He just told you, "I'm getting this," and giving -- passing it
12 on to you.

13 THE WITNESS: He told me exactly what the source
14 was, your Honor.

15 MS. HARRIS: Objection.

16 THE COURT: Well, he may have thought that was the
17 source.

18 In any event, he's not here to testify or be
19 cross-examined. Whether this was realtime or not is not
20 something that's going to be determined on what someone said
21 on the phone who isn't here to be cross-examined. So, we'll
22 receive it for the fact that it occurred but not for its
23 truth.

24 All right. Go ahead. What's next?

25 BY MR. KAZEMI:

1 Q At what time does the T-Mobile receipt say the defendant
2 purchased the prepaid minutes?

3 A. I believe it was 11:14.

4 Q. So, approximately how long after the defendant purchased
5 her prepaid minutes in New York did Agent Walsh receive the
6 information regarding her phone number in Columbia?

7 MS. HARRIS: Objection.

8 THE COURT: Sustained. Sustained. What's next?

9 BY MR. KAZEMI:

10 Q What's the other number listed on this phone record?

11 A. It's a T-Mobile voice mail access number.

12 Q. And how do you know that's the number for T-Mobile voice
13 mail?

14 A. The Intel analyst when they were analyzing numbers told
15 me that that's the T-Mobile access number and I --

16 Q. What time was that number called?

17 MS. HARRIS: Objection.

18 THE COURT: I'll sustain the objection and instruct
19 the jury to disregard it.

20 Stop bringing in this hearsay. You can
21 bring -- you've got subpoenas. You can bring people here into
22 court to testify, but don't shortcut the process by asking
23 this witness what other people have told him.

24 What's next?

25 BY MR. KAZEMI:

1 Q Was there another way you determined that was the phone
2 number for T-Mobile voice mail?

3 A. I called it.

4 Q. You called it personally?

5 A. Yes.

6 Q. What time was that number called?

7 A. On the records she was called at 10:14 which would be
8 1:14.

9 Q. Did there come a time when you subpoenaed the phone
10 records for the caller who called the defendant in her motel
11 room?

12 A. Yes.

13 Q. I'd like to show you what's been marked for
14 identification as Government's Exhibit 6.

15 Do you recognize those documents?

16 A. Yes.

17 Q. What are those records?

18 A. Those are the documents for the --

19 THE COURT: Those are the documents that were
20 furnished you by T-Mobile pursuant to a subpoena?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: If there's no objection, I'll receive
23 and mark them in evidence.

24 (Government Exhibit 6 received in evidence.)

25 BY MR. KAZEMI:

1 Q And this is a subpoena for the number that called the
2 defendant while she was in the motel room?

3 A. Yes.

4 Q. I'd like to show you page 1 of these records. Who is the
5 subscriber information listed for this phone?

6 A. Lena Reyes.

7 Q. What's the date of birth?

8 A. February 2nd, 1955.

9 Q. And is there an address listed?

10 A. 8023 37th Avenue, Jackson heights, New York.

11 Q. What, if anything, did you do after receiving this
12 information?

13 A. I tried to verify whether or not there was a Lena Reyes
14 at that address, and there is not.

15 Q. When was this phone activated?

16 A. This phone was activated on June 30th of 2008.

17 Q. Is this a prepaid phone?

18 A. Yes.

19 Q. I'd like to show you additional records from Exhibit 6.
20 When was the first call placed on this phone?

21 A. July 7th at approximately 1:23 p.m.

22 Q. Have you reviewed the records from this phone for
23 July 31st, 2008?

24 A. Yes.

25 Q. What, if anything, did you learn as a result or review of

1 those records?

2 A. That on July 31st this number had several calls starting
3 at 6:15 which would be 9:15 a.m. to a (516) number which is a
4 international calling card number. There are one, two, three,
5 four calls using this international calling card.

6 Then at approximately 11:18 is that initial phone
7 call with the defendant, approximately four minutes --

8 THE COURT: Just to refresh your recollection --

9 MS. HARRIS: Objection.

10 THE COURT: -- the number on the defendant's -- on
11 the phone that was found with the defendant what was?

12 THE WITNESS: It's there at 8:18, your Honor. It's
13 (646) 683-9762.

14 THE COURT: Okay. What's next?

15 BY MR. KAZEMI:

16 Q And do you recognize that number?

17 A Yes. That is a --

18 MS. HARRIS: Objection.

19 THE COURT: Can you recognize that it's an
20 international call just from the numbers?

21 THE WITNESS: Your Honor, I know for -- that it's an
22 access number for a Cinco Telecom calling card, a
23 predominantly Spanish speaking calling card that's in here as
24 well.

25 THE COURT: All right. What's next?

1 BY MR. KAZEMI:

2 Q I'm showing you what's been previously marked for
3 identification as Government's Exhibit 7.

4 Do you recognize that document?

5 A. Yes, this is a Orbitel Columbian prepaid calling card and
6 has the access number that is listed here on the back as an
7 access number.

8 Q. And what's that number?

9 A. That number is (516)368-3040.

10 MR. KAZEMI: Your Honor, I move to admit this into
11 evidence.

12 THE COURT: All right. If there's no objection,
13 I'll mark it.

14 (Government Exhibit 7 received in evidence.)

15 MS. HARRIS: Your Honor, may I approach briefly?

16 THE COURT: If it's necessary. Was this something
17 you found on the defendant or is this just something that you
18 went and bought to illustrate the -- this number?

19 THE WITNESS: The latter, your Honor, to illustrate
20 that number on this --

21 THE COURT: All right. So, with that verification,
22 is there any need to come to sidebar?

23 MS. HARRIS: No, your Honor.

24 THE COURT: Let's go ahead.

25 MR. KAZEMI: I'd like to publish Government's

1 Exhibit 7.

2 THE COURT: All right. Go ahead. You need to get
3 that a little bit focused.

4 MR. NATHANSON: I think if you do one document at a
5 time.

6 THE WITNESS: There you go.

7 BY MR. KAZEMI:

8 Q And do you see that calling card access number?

9 THE COURT: This is just a typical Columbian phone
10 card; is that right?

11 THE WITNESS: Yes, your Honor. It's a card for
12 mostly international phone calls.

13 THE COURT: All right.

14 BY MR. KAZEMI:

15 Q So, Agent Aceves, you reviewed the records on July 31st,
16 2008?

17 A. Yes.

18 Q. Please explain to the jury one more time those four calls
19 to (516)368-3040.

20 A. Yes, four calls to that access number and then a call to
21 the defendant.

22 Q. And what do the records show with regard to the calls to
23 the defendant's phone number?

24 A. They're one, two, three, four, five calls to the
25 defendant or with the defendant. Actually, all of them are

1 outgoing on this, yes, five calls to defendant.

2 THE COURT: Let me just ask this. This access
3 number, international access number, is this a situation --
4 system that you dial this number and then that -- and then
5 dial a telephone number within the country you're calling or
6 is this a -- is this the dialing the access number a first
7 step on the way to calling a foreign number?

8 THE WITNESS: Yes, your Honor. You dial that
9 number, and then you're greeted by a Spanish speaker who says
10 that you've called or to enter your pin number. You enter the
11 pin number that was on the back of that card, and it tells you
12 how many minutes you have or how many dollars you have.

13 Then you dial the international phone number you'd
14 like to dial, and then it tells you how many minutes you have
15 for that call.

16 Then you make the call. So, it's just a prepaid
17 call card for making calls.

18 THE COURT: And will this record reflect both the
19 call to the access number and the call to the number in the
20 foreign country or --

21 THE WITNESS: From this record you only see the call
22 to the access number. Subpoenaing records from Cinco Telecom,
23 that's how we receive what phone number was called
24 internationally.

25 We can do that as well.

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THE COURT: Okay.

(Continued on the next page.)

1 THE COURT: Okay.

2 DIRECT EXAMINATION (Continued)

3 BY MR. KAZEMI:

4 Q Turn your attention to the July 31 record. When was the
5 first call placed to the defendant?

6 A First call to the defendant was 6:15, which would be 9:15
7 a.m.

8 MS. HARRIS: Objection.

9 A I'm sorry, I'm looking at the wrong one.

10 8:18. I'm sorry about that. So many lines. 8:18
11 and that would be 11:18.

12 Q When was the second call that was placed to the
13 defendant?

14 A At 10:04 which would be 1:04. That was about the time
15 that we were entering the defendant's room.

16 Q And the third call that was placed to the defendant?

17 A 1:21.

18 Q Was that also a time when you were in the room?

19 A That's a call that took place while we were in the room.

20 Q And the third call?

21 A The third and fourth calls were at the time that we
22 recorded the calls.

23 Q And those were the calls as 1:26 and 1:28?

24 A Correct.

25 Q What is the next call that this individual made?

1 A A call to voice mail.

2 Q That is the general T-Mobile voice mail number you
3 discussed earlier?

4 A Correct.

5 Q Did you make any other calls?

6 A One more call and he made no further calls.

7 Q What was his last call?

8 A The last call was at 11:51 which was 2:51, 11:51 on the
9 record but 2:51, and he never made another call from this
10 number.

11 Q Was that last call placed before or after the defendant's
12 arrest?

13 A After the defendant's arrest.

14 Q So when was this phone activated if you can remind the
15 jury?

16 A It was activated on June 30th. The first call was placed
17 on July 5th and the very last call was placed on July 31 and
18 it wasn't used again.

19 Q So it was active for 26 days?

20 A Correct.

21 Q During this 26 day period, approximately how many calls
22 were made on this prepaid phone?

23 A I don't remember the exact number but it's several
24 hundred and I believe it was somewhere over 400.

25 Q Within two hours of the defendant's arrest, was this

1 phone ever used again?

2 A No.

3 MR. KAZEMI: No further questions.

4 THE COURT: All right.

5 Do you have some questions on cross?

6 MS. HARRIS: Your Honor, may I take a brief recess,
7 very brief?

8 THE COURT: All right. We'll take a short recess.

9 Don't talk about the case or permit it to be
10 discussed with you.

11 We'll start again shortly.

12 You may retire.

13 (Jury out at 3:35 p.m.)

14 THE COURT: We'll start again shortly.

15 (Recess.)

16 (Continued on next page.)
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1 THE COURT: Are we ready to go?

2 All right, call the jury in.

3 (Jury in at 4:10 p.m.)

4 THE COURT: Let's go ahead with the
5 cross-examination.

6 CROSS-EXAMINATION

7 BY MS. HARRIS:

8 Q Good afternoon, agent.

9 A Good afternoon.

10 Q I just have a few questions for you today.

11 Before July 31, 2008, you had not received any
12 specific information about Ms. Marin Moreno?

13 A About the defendant, no.

14 Q And I'll ask you about your surveillance at the hotel.

15 A Okay.

16 Q When you saw Ms. Marin Moreno enter room 166, you didn't
17 notice if she had to use a key, is that correct?

18 A I did not notice. The defendant stood in front of the
19 door and it appeared to be closed. I couldn't see what she
20 was doing as she was in front of the door. She was between
21 me, my position and the door, so I just saw her go in.

22 Q Now when you entered room 166, you had your gun drawn,
23 correct?

24 A I was the last to enter the room and I had my weapon
25 drawn to clear the room for security.

1 Q And you were wearing a bulletproof vest?

2 A I was wearing a bulletproof vest.

3 Q And your badge was at your hip, correct?

4 A Correct.

5 Q You testified about the phone calls that were coming in
6 while you were in the room?

7 THE COURT: Did you have any markings on you just
8 aside from this badge that alerted people that you were a
9 government agent or police or some law enforcement or not?

10 THE WITNESS: I don't recall what the two people
11 were wearing before me, however, they did say police as I
12 entered. The two entering before me identified themselves as
13 police.

14 THE COURT: But as far as clothing was concerned,
15 you were dressed in ordinary street clothes plus this vest?

16 THE WITNESS: Yes, your Honor'.

17 THE COURT: And the vest itself didn't say police?

18 THE WITNESS: No, not this particular vest.

19 THE COURT: Go ahead.

20 What is next?

21 Q I want to ask you about the phone calls that came in.

22 THE COURT: Just go ahead and ask. Don't tell us
23 what you are about to do, do it.

24 Q Several phone calls came in while you were in the room,
25 correct?

1 A Correct.

2 Q And while the phone calls came in Ms. Norby Marin Marino
3 was in handcuffs, correct?

4 A Correct.

5 Q And eventually you let her answer one of the calls,
6 correct?

7 A Correct.

8 Q And she agreed to let you listen to them, correct?

9 A Yes.

10 Q And record it?

11 A Correct.

12 Q Now, you talked about a call that came into the hotel
13 land line?

14 A Yes.

15 Q Was that call before or after the calls on the cell
16 phone?

17 A Honestly, I don't recall the exact time it came in. My
18 recollection is that it came in after all the calls to the
19 cell phone had come in but in all honesty, I can't
20 specifically say what time that came in.

21 Q But close in time, fair to say, to the calls on the cell
22 phone, correct?

23 A I think it was closely after the last call to the call on
24 the cell phone.

25 Q Now, you testified about 13 --

1 THE COURT: Why don't you turn off that microphone
2 because as you get closer, the volume of your voice changes.
3 So just turn it off.

4 Keep your voice up.

5 Go ahead.

6 MS. HARRIS: I don't see the switch, your Honor.

7 THE COURT: It's the light in the middle of the
8 microphone.

9 What is next?

10 Q You testified about a prayer that you found in Ms. Marin
11 Marino's luggage, correct?

12 A Yes.

13 Q And you also found in her luggage multiple prayer books,
14 correct?

15 A There were religious items.

16 Q A rosary?

17 A I think there is a rosary on the inventory. I don't
18 recall off the top of my head.

19 Q And religious candles, correct?

20 A There were candles.

21 Q And other prayers, correct?

22 A Correct.

23 MS. HARRIS: If I may approach, your Honor.

24 THE COURT: Yes.

25 Q I'm going to show you what has been marked for

1 identification as Defendant's Exhibit O2, P2 and Q2.

2 A Thank you.

3 Q Do you recognize these documents?

4 A Yes.

5 Q Those were also prayers found in Ms. Marin Moreno's
6 luggage?

7 MR. KAZEMI: Objection, your Honor, relevance.

8 THE COURT: No, overruled.

9 A Yes.

10 Q And those are prayers -- you speak Spanish, right, agent?

11 A Yes.

12 Q And these prayers are in Spanish?

13 A Yes.

14 Q And these prayers are I think -- excuse me. If I may
15 approach.

16 A You want all of them?

17 Q Yes.

18 THE COURT: If you are going to get into the
19 content, I think you better offer them.

20 MS. HARRIS: Your Honor, I offer Exhibits O2, P2 and
21 Q2 in evidence.

22 THE COURT: Besides relevance, any other objection?
23 If not, they are received and marked.

24 MR. KAZEMI: Your Honor, none of these prayers have
25 been translated.

1 THE COURT: I beg your pardon?

2 MR. KAZEMI: They haven't been translated.

3 THE COURT: That is true but that isn't a ground for
4 objection, particularly with the witness on the stand who can
5 translate for us.

6 What is next?

7 (So marked in evidence as Defendants' Exhibit O2, P2,
8 Q2.)

9 Q One of those prayers, O2, is a prayer for opening roads,
10 is that correct?

11 A Yes.

12 Q And Exhibit P2 is the prayer to stay prosperous?

13 A Yes.

14 Q And Q2 is the prayer to just judge against enemies,
15 correct?

16 A Yes.

17 THE COURT: What was the word in Spanish?

18 A Justo Juez, J-U-S-T-O J-U-E-Z.

19 MS. HARRIS: Your Honor, I have no further
20 questions.

21 THE COURT: All right, any other questions from the
22 prosecution?

23 MR. KAZEMI: No, your Honor.

24 THE COURT: Thank you very much.

25 You are excused.

1 Would you call your next witness.

2 MR. KAZEMI: Yes, your Honor.

3 Your Honor, we have two short witnesses. I was
4 wondering when the Court wants to break. They will be brief.

5 THE COURT: You can start with one or the other.

6 MR. KAZEMI: The government calls Customs & Border
7 Protection officer Luis Cordero.

8 THE COURT: Come on up and have a seat, sir.

9 THE WITNESS: Thank you.

10 LUIS CORDERO, having been called as a
11 witness, first being duly sworn, was examined and
12 testified as follows:

13 THE CLERK: Please state your name and special
14 assessment it for the record.

15 THE WITNESS: Luis, L-U-I-S, Cordero C-O-R-D-E-R-O.

16 DIRECT EXAMINATION

17 BY MR. KAZEMI:

18 Q Good afternoon, Officer Cordero.

19 A Good afternoon.

20 Q What do you do for a living?

21 A I'm a Customs & Border Protection enforcement officer.

22 Q How long have you been an enforcement officer with
23 Customs and Border Protection?

24 A Approximately six years.

25 Q What did you do prior to that?

1 A I worked for the Immigration & Naturalization Service for
2 approximately five years or so.

3 Q Where are you currently assigned?

4 A At JFK International Airport in Jamaica, New York, Queens
5 County.

6 Q How long have you been assigned there?

7 A About 11 years or so.

8 Q What are your responsibilities as an enforcement officer
9 as JFK International Airport?

10 A As an enforcement officer, I investigate any violation of
11 federal law within the port of entry or the airport.

12 Q Do you have any specialized training as an enforcement
13 officer?

14 A Yes, I do.

15 Q And what kind of training have you received?

16 A I went down to the federal law enforcement training
17 center for a training related to my position which was
18 approximately 45 days or so.

19 Q What matters were you instructed on?

20 A We were instructed on Titles 8 and 18 of the United
21 States Codes and procedures in handling evidence, Miranda,
22 interview and techniques -- techniques, et cetera, et cetera.

23 Q Have you completed any other specialized training?

24 A Yes, I have.

25 Q What kind of training was that?

1 A I was able to complete the basic immigration officer
2 academy back in I believe it was 1997 which was about 16 weeks
3 long down again at the federal law enforcement training center
4 in Glynnco, Georgia.

5 Q In performing your duties as an enforcement officer, do
6 you often review records?

7 A Yes, I do.

8 Q What types of records do you review?

9 A Basically border crossing records, customs declarations,
10 I-94 immigration records, et cetera, et cetera.

11 Q Please take a look at Government's Exhibit 23 marked for
12 identification, pages nine and 10.

13 A Okay.

14 Q Do you recognize that document?

15 A Yes, I do.

16 Q What is that?

17 A It's what we call a customs declaration.

18 Q Is that type of document kept in the ordinary course of
19 business?

20 A Yes, it is.

21 MR. KAZEMI: Your Honor, I move to admit Exhibit 23,
22 pages nine and 10 in evidence.

23 THE COURT: If there is no objection, I'll receive
24 it.

25 Can you hand me the document and I'll mark it in

1 evidence.

2 This doesn't appear to be the original stickered
3 document.

4 MR. KAZEMI: Your Honor, the original sticker is on
5 the front page.

6 THE COURT: All right, do you want to give me the
7 whole document and I'll mark the cover page.

8 You are offering now the whole document or just
9 these pages?

10 What should I do, just mark the cover page and the
11 two pages.

12 MR. KAZEMI: That is fine. We are only offering
13 pages nine and 10.

14 THE COURT: Nine and 10, and any reason I can't mark
15 as well 1 since it has the sticker on it?

16 MR. KAZEMI: That would be fine, your Honor.

17 THE COURT: I'll staple these together.

18 MS. HARRIS: Your Honor, besides -- is your Honor
19 admitting page 1?

20 THE COURT: Yes.

21 There is no objection. Go ahead.

22 What is next?

23 (So marked in evidence as Government's Exhibit 23.)

24 Q What is the date on this customs declaration, Officer
25 Cordero?

1 A Your Honor, may I?

2 THE COURT: Yes.

3 Just take it.

4 THE WITNESS: Thank you.

5 A Stamped July 31, 2008.

6 Q And who does this document pertain to?

7 A Norby Marin Moreno.

8 Q Who typically fills out a customs declaration form?

9 A Every person arriving or head of household arriving into
10 the United States.

11 Q When will this form be filled out by the traveler?

12 A Prior to presenting themselves to what we call the
13 primary inspector or officer prior to them entering the United
14 States.

15 Q So after this form is filled out, who would it be
16 presented to?

17 A The traveler would present the form along with other
18 documentation to what we call a primary officer. That is
19 normally the first officer that the person encounters once
20 they enter the United States and seeks admission.

21 Q This form is in Spanish, correct?

22 A That's correct.

23 Q Are the questions on the Spanish version of the customs
24 form the same as the questions on the English version?

25 A Yes, they are.

1 Q Are you also fluent in Spanish?

2 A Yes, I am.

3 Q How did you develop your fluency?

4 A My parents are native speakers, Puerto Ricans, so we
5 spoke Spanish at home and that was my primary language.

6 Q What does question four ask on this declaration form?

7 A It is asking for address in the United States or name of
8 a hotel.

9 Q And what address did the defendant in this case, Norby
10 Marin Marino, list as her destination address?

11 A It's listed here as 5921 Callow in New York.

12 Q Is there an apartment number listed?

13 A Yes, there is.

14 Q Is there a signature at the bottom of that document?

15 A Yes, there is.

16 Q Now, I'd also like to show you what has been previously
17 marked as Government's Exhibit 23, pages 15 and 16.

18 A I don't have a copy of it.

19 THE COURT: What is it you are looking for?

20 THE WITNESS: Your Honor, may I?

21 THE COURT: Yes.

22 THE WITNESS: Thank you.

23 THE COURT: Do you have the two pages of the earlier
24 exhibit that have not been received?

25 What is the question?

1 Q Do you recognize that document?

2 A Yes, I do.

3 Q What is that documents?

4 A It's another customs declaration.

5 Q What is the date for that customs declaration?

6 MS. HARRIS: Objection.

7 THE COURT: Yes, I don't see the relevance of that
8 document.

9 I'll sustain the objection to the document and this
10 line of questioning.

11 What is next?

12 MR. KAZEMI: No further question your Honor.

13 THE COURT: Do you have any questions of this
14 witness?

15 MS. HARRIS: I do not, your Honor.

16 THE COURT: All right.

17 Thank you very much.

18 Do you want to call your other brief witness?

19 MR. KAZEMI: Yes, your Honor.

20 (Witness excused.)

21 THE COURT: I know I have another matter scheduled
22 for 4:30. I'll hear that as soon as we have concluded this
23 other brief witness.

24 Ma'am, come on up here and have a seat in the
25 witness box.

1 You are going to act as an interpreter?

2 THE INTERPRETER: Yes.

3 THE COURT: Would the interpreter raise his right
4 hand.

5 (Official Spanish Interpreter sworn, Mario
6 Michelena.)

7 THE COURT: Would you tell us for the record your
8 name.

9 THE INTERPRETER: Federal certified Spanish
10 interpreter Mario Michelena.)

11 THE COURT: Will the witness raise her right hand.

12 MARIA PATRICIA CARRASQUILLA, having been called as a
13 witness, first being duly sworn, was examined and
14 testified as follows:

15 THE COURT: Ma'am, would you tell us your name and
16 spell it for the court reporter.

17 THE WITNESS: Maria Patricia Carrasquilla.

18 THE COURT: How is the last name spelled?

19 THE WITNESS: C-A-R-R-A-S-Q-U-I-L-L-A.

20 THE COURT: All right, go ahead.

21 DIRECT EXAMINATION

22 BY MR. KAZEMI:

23 Q Good morning.

24 A Good morning.

25 Q Do you work?

1 A Yes.

2 Q Where do you work?

3 A In a restaurant.

4 Q Which restaurant?

5 A Chipodly Music and Grill Restaurant.

6 THE COURT: What does the word Chipodly mean in
7 Spanish or refer to?

8 THE WITNESS: It's a Mexican dish.

9 THE COURT: Okay, go ahead, counsel.

10 Could you keep your voice up.

11 You have to be heard not only by the witness but by
12 the lawyers and everybody all the way over on that side of the
13 room, so speak up.

14 Go ahead.

15 Q Do you have any children?

16 A Yes.

17 Q How many?

18 A Three.

19 Q And how old are they?

20 A 33, 30 and 22.

21 Q What is your birthday?

22 A February 7, '57.

23 Q Where were you born?

24 A Colombia, Medellin.

25 Q Where do you live now?

1 A Queens.

2 Q How long have you lived in the United States?

3 A Ten years.

4 Q Since you moved to the United States, have you always
5 lived in Queens?

6 A Yes.

7 Q What is your street address?

8 A 5921 Calloway Street, Corona, New York 11368.

9 Q What is your apartment number?

10 A 6E.

11 Q How long have you lived at your current address?

12 A Six years.

13 Q Do you know a woman named Norby Marin Marino?

14 A I only knew her for a few days.

15 Q Do you see her sitting in this courtroom?

16 A I don't see her, no. I cannot really distinguish her.
17 Where is she?

18 Q I can't answer any questions.

19 When did you first meet Ms. Morena?

20 A Norby, two years ago, three years ago.

21 Q How did you meet her?

22 A I rent a room to her in my apartment for a few days.

23 Q Do you remember approximately when that was?

24 A I think -- I don't remember exactly. It was summer I
25 think two years ago.

1 Q And was that the apartment that you currently live at
2 now?

3 A Yes.

4 Q Do you know where Norby stayed before she stayed with you
5 at that apartment?

6 A At a hotel.

7 Q Do you know which hotel?

8 A No.

9 Q Did Norby have any visitors when she stayed with you?

10 A I don't remember. I didn't see anything.

11 Q Did she tell you why she was in New York?

12 A Yes.

13 Q What did she tell you?

14 A Because the plane had made a stopover in New York and she
15 was going to visit her daughter in another state because the
16 ticket was cheaper that way.

17 Q How many days did she stay with you in New York?

18 A About a week.

19 Q And she had also stayed at a hotel prior to that?

20 A I think so but I don't know. I don't know. She was
21 coming from a hotel but I don't know how many days.

22 Q When is the last time you spoke with Ms. Morena?

23 A When she left, she left to go to her daughter's and I
24 didn't see her again.

25 Q How were the terms of your last communication with Ms.

1 Morena?

2 THE COURT: How were the terms?

3 Q Were you friendly with Ms. Morena when she left?

4 A I mean normal, you know, it was not friendly friendly
5 because I didn't know her much.

6 Q Do you know Ms. Morena's family?

7 A No.

8 Q Do you know any of her friends?

9 A I did meet but no, it was not a friend of hers, no.

10 Q Does she know any of your family or friends?

11 A No.

12 Q I'm going to show you a document that was previously
13 admitted as Government's Exhibit 23.

14 Do you recognize this address?

15 A That's the address for my house but it's not correctly
16 written down.

17 THE COURT: What's the mistake?

18 THE WITNESS: Calloway is not written down the right
19 way.

20 THE COURT: How would you spell it?

21 THE WITNESS: And it doesn't have the apartment
22 number.

23 THE COURT: The apartment number is wrong or -- is
24 that wrong?

25 Do want to bring up the original so the witness can

1 look at it?

2 MR. KAZEMI: Sure.

3 THE WITNESS: Because I cannot distinguish very
4 well.

5 (Pause.)

6 A It's written okay here but Calloway is not like that.

7 THE COURT: What is the apartment number?

8 THE WITNESS: That one, 6E.

9 THE COURT: And that's your apartment?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Thank you.

12 Anything else?

13 MR. KAZEMI: Just very briefly, your Honor.

14 Q Did you know that Ms. Morena was in the United States
15 right now?

16 A No.

17 Q And can you read that line at the bottom of the form?

18 A This one?

19 Q This one.

20 MS. HARRIS: Objection.

21 THE COURT: I'm sorry, you want the witness to
22 translate that into English?

23 MR. KAZEMI: Yes, your Honor.

24 THE COURT: I think that is not the reason for
25 bringing this witness all the way in here. Someone else can

1 do that.

2 Anything else?

3 MR. KAZEMI: One last question, your Honor.

4 Q Did Ms. Morena -- were you expecting Ms. Morena to visit
5 you?

6 THE COURT: In July or August?

7 Q In July?

8 THE COURT: I mean of this year.

9 Q Were you expecting Ms. Morena to visit you in July of
10 this year?

11 A No.

12 MR. KAZEMI: No further questions.

13 THE COURT: Okay, do you have any questions?

14 MS. HARRIS: I do, your Honor.

15 THE COURT: All right, go ahead.

16 CROSS-EXAMINATION

17 BY MS. HARRIS:

18 Q Good afternoon.

19 A Good afternoon.

20 Q You helped Ms. Morena out previously, correct?

21 THE COURT: Helped her out? Let's phrase it a
22 little more carefully, counsel.

23 Q You let her stay at your house, correct?

24 A Yes.

25 Q And you let her stay there because you had been contacted

1 by someone, correct?

2 MR. KAZEMI: Objection, your Honor.

3 THE COURT: Overruled.

4 A Yes.

5 Q It was the nephew of a friend of yours, correct?

6 MR. KAZEMI: Objection, your Honor, this is beyond
7 the scope of direct.

8 THE COURT: No, overruled.

9 A A nephew of a female friend.

10 Q It was a Mr. Hermes, correct, a Mr. Hermes?

11 A Yes.

12 Q And he said he had a friend in New York who needed help,
13 correct?

14 MR. KAZEMI: Objection, your Honor.

15 THE COURT: I'll permit it not for its truth as to
16 whether this really was her nephew with a friend in New York
17 but simply for the fact that it was said, if it was said.

18 Did this gentleman tell you -- I'm sorry, counsel,
19 you can rephrase the question.

20 Q Mr. Hermes said that Ms. Marin Moreno needed a place to
21 stay, correct?

22 A Yes.

23 Q And then you offered your room, correct?

24 A Yes.

25 Q And you helped her get a phone, correct?

Carrasquillo/Cross/Harris

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1 THE COURT: Excuse me, did you rent the room or just
2 offered it to her without compensation?

3 THE WITNESS: No, I rented it out to her.

4 THE COURT: All right.

5 What is next?

6 THE WITNESS: For a few days.

7 Q And you helped her get a phone, correct?

8 A Yes.

9 Q And while she was with you, she tried to call her cousin
10 in New York, correct?

11 THE COURT: If you know.

12 A I don't know.

13 Q You sometimes let her use your phone, correct?

14 A Maybe. I don't remember.

15 Q And your phone number is (646)421-0106, is that right?

16 A Yes.

17 Q And that's been your phone number for several years?

18 A Yes.

19 Q And that was your phone number at the time that Ms.
20 Morena -- Ms. Marin Moreno stayed with you, correct?

21 A Yes. That's right.

22 Q When she stayed with you, you learned that she had family
23 problems, correct?

24 MR. KAZEMI: Objection, your Honor.

25 THE COURT: You are getting pretty far afield from

1 the direct examination so I'll sustain the objection.

2 Anything else?

3 MS. HARRIS: Nothing further, your Honor.

4 THE COURT: All right, that said, thank you very
5 much, ma'am.

6 You are excused.

7 (Witness excused.)

8 THE COURT: Ladies and gentlemen, we are going to
9 suspend for the day. We'll start again tomorrow morning at
10 9:30.

11 Once again, don't talk about the case permit it to
12 be discussed with you.

13 Have a good evening. I'll see you back here at
14 9:30 you should come directly to the jury room now that you
15 know where it is.

16 (Jury out at 4:45 p.m.)

17 (Whereupon, the trial was adjourned to December 10,
18 2008 at 9:30 a.m.)

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